

**EXPEDITED CONSIDERATION REQUESTED**

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BEFORE THE  
SURFACE TRANSPORTATION BOARD

237902

**SHERWIN ALUMINA COMPANY, LLC**  
**4633 Highway 361**  
**Gregory, Texas 78359**

**Petitioner,**

v.

**UNION PACIFIC RAILROAD**  
**COMPANY**  
**1400 Douglas Street**  
**Omaha, Nebraska 68179**

**Respondent.**

ENTERED  
Office of Proceedings  
March 10, 2015  
Part of  
Public Record

**Docket No. 42143**

**PETITION FOR AN ORDER COMPELLING UNION PACIFIC RAILROAD  
COMPANY TO PROVIDE COMMON CARRIER RAIL SERVICE**

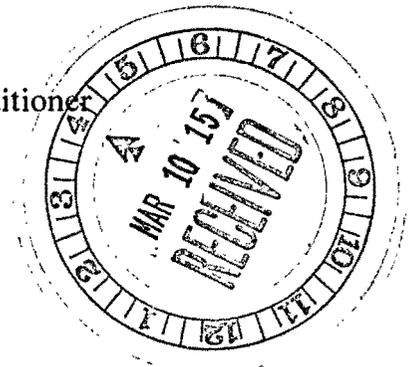
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Dated: March 10, 2015

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**PETITION FOR AN ORDER COMPELLING UNION PACIFIC RAILROAD  
COMPANY TO PROVIDE COMMON CARRIER RAIL SERVICE**

Sherwin Alumina Company, LLC (“Sherwin”) hereby petitions the Surface Transportation Board (“Board”) for an order compelling Union Pacific Railroad Company (“UP”), pursuant to 49 U.S.C. §§ 11101(a) and 11701, to provide common carrier rail service for the shipment of lime to Sherwin’s alumina production facility located in Gregory, Texas. As UP is not providing any rail service today, Sherwin requests that the Board expedite its consideration of this Petition.

On November 6, 2014, UP ceased providing any rail service to Sherwin’s plant, despite having served the plant for many years, solely because of a unionized labor work stoppage at the facility. In order to restart service, Sherwin requested that UP

provide common carrier rail service for the delivery of lime from Sherwin's two rail-served lime suppliers located near San Antonio, TX. UP refused to deliver the requested lime.

UP is required to provide rail service upon reasonable request under common carrier rates and service terms. UP's refusal to provide this service to Sherwin constitutes a violation of 49 U.S.C. § 11101(a). Consequently, Sherwin requests that the Board declare UP in violation of its common carrier obligation, and order UP to immediately provide the requested lime service. Indeed, as explained herein, Interstate Commerce Commission ("ICC") and court authority firmly establish that UP's common carrier obligation is not extinguished merely because a work stoppage exists.

This Petition is supported by the accompanying Verified Statements of Kent Britton, Chief Financial Officer of Sherwin Alumina, who addresses his interactions with UP after the work stoppage began, as well as general information about Sherwin; George Gleditsch, Sherwin's Procurement Manager, who addresses his interactions with UP before and after the work stoppage, as well as Sherwin's lime requirements; Sarah Waldhelm, Transportation Specialist, who addresses typical UP service patterns and Sherwin's recent attempts to have common carrier deliveries of lime restarted; and Cindy Jette, Transportation Specialist at Sherwin, who addresses attempts to have a specific car of lime placed at the Sherwin plant; and counsel's legal argument, which constitute Sherwin's case-in-chief in support of the relief requested.

## **BACKGROUND**

Sherwin is a leading producer of alumina, and one of the few alumina producers in the United States. Verified Statement of Kent Britton (“Britton V.S.”) at 2. Alumina (aluminum oxide) is extracted from bauxite ore. It is then refined to a fine powder form. *Id.*

The Sherwin Alumina plant is located in Gregory, TX, which is situated along the Gulf Coast of Texas. The Sherwin plant has been in operation for more than 60 years. The facility sits on over 1,600 acres along the Gulf Coast in the greater Corpus Christi area, and it has the capacity to produce 1.6 million tons of alumina per year. *Id.*<sup>1</sup>

Sherwin employs 600 total employees: 450 unionized workers represented by the United Steel Workers and 150 management and salaried employees. The Sherwin plant supports another 1,500 jobs in the Gregory/Corpus Christi area. *Id.* at 3.

### **I. Sherwin’s Production Process and Need for Lime**

Sherwin produces two different forms of alumina: smelter-grade alumina and chemical-grade alumina. The smelter-grade alumina accounts for approximately 90% of Sherwin’s production. This product is shipped to smelters around the world from Sherwin’s on-site ship loading facility. *Id.*

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<sup>1</sup> Reynolds Metal Company developed the original facility, which has been expanded several times. In 2007, Glencore, a Swiss multi-national commodity trading and natural resources development company that ranks No. 10 in the Fortune Global 500, acquired the facility. Glencore also assists with the marketing of alumina produced by Sherwin. *Id.*

Sherwin annually produces approximately 178,000 metric tons of chemical-grade alumina. Chemical-grade alumina, while a smaller portion of Sherwin's production, is a critical product to the industries that rely on it because the supply is extremely limited. Indeed, chemical-grade alumina is used in many products, including airplanes, beer cans, fire-retardant carpet, seat cushions, toothpaste, deodorant, antacids and artificial marble. *Id.* Sherwin relies, almost exclusively, on UP rail service to deliver the alumina around the country. In addition, Sherwin's ability to load alumina into trucks is very limited.

The production process at Sherwin's plant relies on a number of raw materials including: bauxite ore; caustic soda; and most importantly, the subject matter of this Petition, lime from quarries near San Antonio, TX.

Lime is an essential raw material in the production process at the plant. Specifically, the Bayer process, used in the refining of alumina from bauxite ore, requires the addition of lime early in the production process to control the phosphorus content and aid in the solubility of the slurry that will ultimately become refined alumina. Without lime, Sherwin *cannot* produce refined alumina products. Sherwin requires 300 tons of lime a day when running at its normal production rate. *Id.* at 3-4.

## **II. UP's Historical Rail Service for Lime Shipments**

UP and its predecessors have served the Sherwin plant for over 50 years. UP provides single line service for Sherwin's lime service, including last-mile service to the plant through the use of local trains originating at UP's yard in Gregory, TX. In order

to reach the plant, UP crosses a four-lane road, complete with gates and flashers warning systems, and then UP enters the Sherwin property. However, UP's track ownership does not end at the property line. Instead, UP owns approximately one-half mile of track inside the Sherwin property. Verified Statement of Sarah Waldhelm ("Waldhelm V.S.") at 2

Before the work stoppage that occurred in October 2014, UP provided regular deliveries of lime classified as STCC 3274110, Bulk Crushed Quicklime.<sup>2</sup> Verified Statement of George Gleditsch ("Gleditsch V.S.") at 1. On a typical day, Sherwin received two to twenty rail cars of lime, and on average the plant received 18-28 railcars per week with each railcar carrying approximately 100 tons of lime. Waldhelm V.S. at 2. Rail cars were delivered Monday through Friday. A similar pattern occurred for outbound loaded alumina cars and empty cars returning to Sherwin's lime suppliers. *Id.*

Historically, UP provided Sherwin's lime transportation service under common carrier rates and service terms. Indeed, Sherwin's two lime suppliers, Austin White Lime Company ("Austin White") and Lhoist Quarry ("Lhoist"), have usually arranged for the transportation of lime to Sherwin's plant – again through common carrier service, but recent shipments, addressed herein, have been arranged by Sherwin. Gleditsch V.S. at 3. Regardless, Sherwin ultimately paid the freight and Sherwin

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<sup>2</sup> Bulk Crushed Quicklime is not an exempt commodity. 49 C.F.R. § 1039.11(a) (STCC No. 32-741: Lime or lime plaster).

provided some of the rail cars used to transport the lime. UP provided the balance of the necessary rail cars. Sherwin has contracts with both suppliers, and under those agreements, Sherwin and the quarries coordinated with each other and UP to ensure a steady flow of lime to the plant. *Id.*

### **III. Pre-Work Stoppage Communications with UP**

Sherwin rarely experiences material labor disputes. Nevertheless, Sherwin always prepares contingency plans in the event it is unable to reach agreement on a new contract with its 450 unionized employees. As Sherwin expected negotiations to begin on a new agreement in the summer of 2014, Sherwin concurrently began planning for continued operation of the plant, including continued rail service. Britton V.S. at 4-5; Gleditsch V.S. at 3-4.

Thus, in April and May 2014, Mr. Gleditsch initiated regular contact with UP. Indeed, Sherwin repeatedly contacted UP representatives to discuss measures that could be taken to ensure uninterrupted rail service from UP in the event of a work stoppage. Gleditsch V.S. at 4. Sherwin made it clear that the plant would continue to run normally in such an event, and that Sherwin expected UP to continue to provide regular service to the facility since production would continue. UP did not respond to Sherwin's queries. *Id.*

Sherwin became increasingly concerned that UP was not responding to its inquiries. Thus, Sherwin began escalating its efforts. For example, on July 18, 2014, Mr. Gleditsch spoke with Cameron Scott, the Executive Vice President of Operations who

was non-committal. That conversation led to further conversations with other UP operating personnel, who informally conveyed that UP would only provide service twice per week for two weeks following the beginning of a work stoppage. Mr. Gleditsch details similar, additional conversations with UP in his Verified Statement. *See Gleditsch V.S. at 4-6.*

In the summer of 2014, UP began suggesting that it might not provide service to Sherwin if a work stoppage were to occur, or that only reduced service provided by management employees might be available. During this time, UP continued to refuse to provide specific answers to Sherwin's inquiries. Instead, UP would only speak by phone and all explanations appeared to be unofficial. *Id.*; Britton V.S. at 7-8. Regardless, the unofficial position of UP was that its regular crews would refuse to cross a picket line; that UP would not force them to do so; and that UP was short on management employees in Gregory, TX and elsewhere. *Id.*

Sherwin was concerned that UP might cease providing service. In order to prevent such an occurrence, between July and October 2014, Sherwin communicated at least five offers of assistance to UP to ensure uninterrupted service, including: financial support for additional management employees to serve the plant; offers to engage a UP-approved rail operations contractor to move rail cars on and off the Sherwin property; and offers to use Sherwin-owned locomotive equipment to reach UP. *Gleditsch V.S. at 4-5.* Sherwin emphasized that it was "willing to do anything possible to ensure that service continued." *Id.*

UP categorically rejected all offers of assistance from Sherwin. The only rationale that UP cited for its rejections of service provided by contractors was a vague concern about “surface rights,” which UP intimated would somehow foreclose the options Sherwin had presented. *Id.* at 5. UP also ignored Sherwin’s offer to compensate it for shifting management employees to the Corpus Christi/Gregory area. *Id.*

#### **IV. Post-Work Stoppage Cessation of Service and Communications with UP**

Sherwin first met with the union representatives to discuss a new contract on July 8, 2014. Sherwin met on a continuing basis with the union representatives thereafter. Britton V.S. at 5. On October 1, 2014, Sherwin provided its last, best, and final offer to its unionized employees. On October 10, 2014, the union members rejected the contract offer. Following the rejection, on October 11, Sherwin locked out the bargaining unit employees. The work stoppage is ongoing. *Id.*

Sherwin was fully prepared for the picket line that resulted from the work stoppage. Sherwin clearly marked its property lines. Sherwin arranged for sheriff’s deputies to be present outside of the plant to ensure that no traffic issues or other problems occur. Sherwin also enlisted a specialized private security company to man external checkpoints in the vicinity of the plant. The checkpoints are operated 24 hours a day, 7 days a week. *Id.* at 5-6.

No illegal activities on the picket line have been reported. *Id.* Indeed, Sherwin has many contractors and suppliers that regularly enter and exit the Sherwin property, all without incident. *Id.*

UP similarly encountered no difficulties when serving the Sherwin plant. Indeed, no incidents were reported during the period between October 11 and November 6, 2014, when UP provided twice-weekly train service with UP management personnel. UP's management employees were never harassed or threatened by any of the picketers. *Id.* at 6. In fact, Mr. Brad Thrasher (UP's Vice President of Industrial Products) advised Sherwin that only one interaction between the picketers and a UP employee occurred during this period. Specifically, a picketing employee asked a management train operator what he was doing at the plant. When the operator explained who he was and why he was there, the conversation ended. *Id.*

Sherwin also notes that the rail line is adjacent to the main road entering the facility. However, the picketers are not allowed to stand on or around the rail line for safety reasons. Regardless, Sherwin has offered to increase security around the rail line if that would help facilitate UP's restoration of service, but UP has never expressed an interest in Sherwin's offer. *Id.*

A picket line continues today, but the activity is limited to a handful of employees most days, and in fact, there are some days when no picket line is present. Even then, UP will not provide service to Sherwin. *Id.* at 7.

Following the work stoppage, Mr. Britton and Mr. Gleditsch communicated repeatedly with UP. Specifically, Mr. Britton and UP's Mr. Thrasher had two telephone conversations: one on October 28, 2014, and another on December 9, 2014. *Id.* at 7-9. In

addition, Sherwin and UP exchanged correspondence via email about UP's refusal to serve Sherwin. Gleditsch V.S. at 9.

In a letter dated October 22, 2014 from Mr. Britton to Mr. Thrasher, Sherwin requested that UP continue service with respect to outbound alumina, and by extension, lime service as the plant cannot run without lime.<sup>3</sup> Britton V.S. at 7. UP refused. In a letter dated October 28, 2014, Mr. Thrasher reiterated UP's position that "normal service by Union Pacific's union-represented employees is not a practicable solution." Mr. Thrasher explained UP's alleged limitations with respect to management employees providing such service. *Id.*

The two letters were followed by a conference call between Mr. Thrasher and Mr. Britton on October 28, 2014. Mr. Thrasher expressed concerns that UP's unionized employees would balk at serving Sherwin's plant, and that unspecified retaliation might be visited upon UP. *Id.* at 7-8. Mr. Thrasher also predicted that UP's employees would claim they were threatened if they served Sherwin, and that UP would not require them to serve Sherwin in such a case, regardless of the veracity of any such claims. The message that Sherwin took from the call was the UP saw no value in even asking its employees to serve Sherwin, and that UP was not going to make any additional efforts to serve Sherwin regardless of UP's obligations to do so. *Id.* at 8.

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<sup>3</sup> The letter is attached hereto as Attachment A to Britton V.S.

Sherwin continued to offer alternative solutions similar to those offered prior to the work stoppage. UP rejected all of Sherwin's alternatives. *Id.* UP did, however, extend Sherwin's service for an additional week to November 6, 2014. UP followed through on its representations and ceased service on November 6, 2014.

In November 2014, Sherwin approached the Board's Office of Rail Consumer and Public Assistance concerning UP's cessation of service. *Id.* Sherwin understands that in response to that communication, Board staff contacted UP in an effort to assist Sherwin in the restoration of service. UP, however, again refused to provide service.

During the first week of December, Mr. Britton attempted to set up a face-to-face meeting at UP's headquarters in Omaha, but Mr. Thrasher refused. However, on December 9, 2014, Mr. Britton again called Mr. Thrasher in an attempt to restore service. Mr. Britton noted to Mr. Thrasher that the picket line was lightly manned and that there had been no incidents with the picketers. Mr. Britton also emphasized that Sherwin was prepared to work with UP on alternative means of providing service directly to the plant. UP rejected all such efforts. *Id.* at 8-9.

During the call, Mr. Britton explained that the picket line was lightly manned and that UP's crews would have unfettered access to the plant. Significantly, Mr. Thrasher responded that UP was not concerned with any physical issues associated with the service, but instead was concerned with the philosophical issues associated with serving Sherwin; namely that UP did not want to ask its unionized employees to serve

Sherwin given their likely objection to serving a plant being picketed. *Id.* at 9. Mr. Thrasher then claimed that the perceived threat of crossing a picket line was enough to excuse UP's unionized employees from serving Sherwin – even though no unionized employees had even tried to serve Sherwin or had been threatened in any way. Mr. Thrasher also refused to resume service to Sherwin using management employees. *Id.*

UP continues to provide local train service to other entities located along the same spur line serving Sherwin, including OxyChem and DuPont, which are directly adjacent to the Sherwin facility. *Id.* at 6. UP plainly has the resources to serve Sherwin at the same levels as before the work stoppage, but it simply refuses to do so.

#### **V. Lime Service Restoration Efforts and the Urgent Need for Lime**

Since November, 6, 2014, UP has failed to transport any lime that Sherwin needs for its business. Sherwin therefore has been forced to shift the delivery of lime from rail to trucks. Mr. Gleditsch explains in his Verified Statement, however, that trucking lime is a poor substitute for rail service for several reasons. Gleditsch V.S. at 7-8. First, lime costs \$15-\$20 more per ton to ship by truck than by rail, not including the increased handling costs at the plant that are associated with truck movements. Second, truck service is often unreliable. Lime quarries do not maintain dedicated fleets of trucks and neither does Sherwin. Moreover, demand for truck service in East Texas currently is very high because of the ongoing oil and gas work in the area. *Id.* Consequently, Sherwin had to enlist a third quarry to ensure adequate supplies of lime because one quarry was having difficulty with truck loadings. Third, the Sherwin plant is not

designed to handle regular trucking of lime, chiefly because the facility has very little lime storage capacity and it is designed to offload rail cars of lime moving in regular service not handle 10 or more trucks a day. Fourth, trucking is inefficient. Sherwin requires four trucks for every one railcar of lime. To meet its requirements, Sherwin needs 10-12 trucks every day, and the plant simply was not designed to handle this many trucks of lime on a regular basis. *Id.* at 8.

Fortuitously, Sherwin has not run out of lime due, in part, to an unrelated change in the production level at the facility. However, by July 2015, Sherwin may increase its production. Simply put, without the restoration of UP's rail service and attendant lime deliveries, Sherwin could experience serious adverse impacts. Britton V.S. at 4. Thus, Sherwin's need to restore rail service is urgent.

Recognizing the need to restart lime service, on December 24, 2014, Mr. Britton sent a letter to Mr. Thrasher requesting that UP disclose its common carrier rates and service terms for lime shipments from Sherwin's two lime suppliers: Lhoist and Austin Lime, both located near San Antonio, TX. Mr. Thrasher responded, on January 2, 2015, stating that the applicable rates are those found in UP Tariff 3200. *Id.* at 9.

Sherwin then began the process of requesting the delivery of lime. On January 20, 2015, after retrieving certain rail cars from storage, Sherwin billed a railcar of lime through UP's website from Lhoist. Waldhelm V.S. at 4-5. A second railcar of lime was billed through UP's website from Austin White Lime on January 30, 2015. In each case, UP loaded the cars and moved them to Gregory, TX. For car SHAX 2052

from Austin White Lime, on February 10, 2015, Sherwin's Ms. Waldhelm requested that the car be placed at the Sherwin plant. Ms. Waldhelm directed her request to the local yard manager, customer service, and Sherwin's account representative. *Id.* at 4. On February 11, 2015, UP refused to deliver the SHAX 2052 to the plant, citing Sherwin's ongoing labor dispute. *Id.*

For car SHAX 2025 from Lhoist, Sherwin transportation specialist Ms. Cindy Jette made the request for delivery. Verified Statement of Cindy Jette ("Jette V.S.") at 1. Specifically, Ms. Jette called UP's Mr. Robert Johnson, a local terminal manager in the Gregory, TX area, and left a voicemail message requesting that UP deliver the car. Around this time, Ms. Jette's request was rejected on the UP website and she was told by UP customer service representatives that UP would not spot the cars unless the labor dispute had ended. *Id.* Later, UP's Mr. Johnson returned Ms. Jette's phone call and confirmed that because the labor dispute was still ongoing, UP would not place SHAX 2025. *Id.*

Sherwin's need for lime has not abated. *See Britton V.S.* at 4. Thus, Sherwin seeks the expedited order requested herein.

### **ARGUMENT**

#### **I. UP HAS A COMMON CARRIER OBLIGATION TO PROVIDE RAIL SERVICE**

UP is a rail carrier subject to the Board's jurisdiction under the ICC Termination Act of 1995, 49 U.S.C. § 10101, *et seq.* As such, UP has a statutory

obligation under 49 U.S.C. § 11101(a) to provide rail transportation services upon reasonable request. *Pejepscot Industrial Park, Inc., d/b/a Grimm Industries – Petition For Declaratory Order*, 6 S.T.B. 886, 893-94 (2003) (“*Pejepscot*”) (“a common carrier . . . must provide rail service . . . upon reasonable request.”); *Western Resources, Inc. v. The Atchison, Topeka and Santa Fe Ry. Co.*, STB Docket No. 41604, slip op. at 4-5 (STB served May 17, 1996) (a railroad’s common carrier obligation requires it to comply with any reasonable request for service). *See also The Akron, C. & Y. R.R. Co. v. I.C.C.*, 611 F.2d 1162, 1166 (6th Cir. 1979), *cert. denied*, 449 U.S. 830 (1980) (“The Act’s declaration of the common-carrier status of railroads is not an unjust one, in view of the governmental largess which railroads have received, and in view of the unique importance to commerce of rail transportation”) (citations omitted).

UP has consistently held itself out to provide common carrier rail transportation service for the movement of inbound lime to the Sherwin facility, and its refusal to do now is therefore unlawful. *Britton V.S.* at 3-4. *See, e.g., The Akron, C. & Y. R.R. Co. v. I.C.C.*, 611 F.2d 1162, 1166 (6th Cir. 1979), *cert. denied*, 449 U.S. 830 (1980) (“The Act’s declaration of the common-carrier status of railroads is not an unjust one, in view of the governmental largess which railroads have received, and in view of the unique importance to commerce of rail transportation,” and the “holding out” is what transforms ownership of mere physical assets into a common carrier railroad) (citations omitted); *New Jersey Steam Nav. Co. v. Merchants’ Bank*, 6 How. 344, 382-383 (1848) (“Refusal to carry the goods of some shippers was unlawful.”); *Nat’l Ass’n of Regulatory*

*Util. Comm'rs v. F.C.C.*, 533 F.2d 601, 608 (D.C. Cir. 1976) (“the primary *sine qua non* of common carrier status is a quasi-public character, which arises out of the undertaking ‘to carry for all people indifferently’”) (citations omitted).

In addition to its general common carrier obligation, a carrier must provide “safe and adequate car service and establish, observe, and enforce reasonable rules and practices on car service.” 49 U.S.C. § 11121(a)(1). Likewise, the “Board may require a rail carrier to provide facilities and equipment that are reasonably necessary to furnish safe and adequate car service if the Board decides that the rail carrier has materially failed to furnish that service.” *Id.*

The law is clear that UP, as a common carrier, has a duty and obligation to transport Sherwin’s lime shipments and that the Board is empowered to compel UP to fulfill its obligation as a common carrier. *See Pejepsco*, 6 S.T.B. at 893-94.

*Accord Public Views on Major Rail Consolidations*, Docket No. EP 582, slip op. at 5 (“The Board’s ‘authority . . . is not bounded by the powers expressly enumerated in the Act. . . . [The Board] also has discretion to take actions that are legitimate, reasonable, and direct[ly] adjunct to [its] explicit statutory power.’”) (quoting *ICC v. American Trucking Ass’ns, Inc.*, 467 U.S. 354, 364-65 (1984)).

The Board applies a strict standard when evaluating a railroad’s refusal to provide service. Indeed, the Board has held that a railroad may not refuse to provide services merely because to do so would be inconvenient or unprofitable. *See Pejepsco*, 6 S.T.B. at 898 (“Respondents cannot lawfully make fulfilling their statutory obligations

contingent upon whether they think it is 'worth it' to do so."); *GS Roofing Products Co. v. S.T.B.*, 143 F.3d 387, 391 (8th Cir. 1998). Further, a carrier must adhere to its statutory obligations even if it suffers hardship in so doing. *See Decatur Cnty. Comm'rs v. S.T.B.*, 308 F.3d 710, 715 (7th Cir. 2002).

Significantly, a railroad's common carrier obligation to provide service continues during labor disputes – regardless of whether the railroad or the shipper is experiencing the labor dispute. The Supreme Court has explained that a carrier:

owes the public reasonable efforts to maintain the public service at all times, even when beset by labor-management controversies and that this duty continues even when all the mediation provisions of the [Railway Labor] Act have been exhausted and self-help becomes available to both sides of the labor-management controversy.

*Bd. of Ry. & S. S. Clerks v. Florida E. Coast Ry. Co.*, 384 U.S. 238, 245 (1966); *see also United States v. Sea-Land Serv., Inc.*, 424 F. Supp. 1008, 1011 (D.N.J. 1977) (citing *Bd. of Ry. & S. S. Clerks v. Florida E. Coast Ry. Co.*, 384 U.S. 238, 245 (1966)) (“[A] carrier owes the public a continuing duty to exercise reasonable efforts to maintain services, even when beset by labor controversies.”).

Similarly, a picket line at a shipper or receiver's facility does not extinguish the common carrier obligation. *See Montgomery Ward & Co. v. N. Pac. Terminal Co. of Or.*, 128 F. Supp. 475, 500 (D. Or. 1954) (it is illegal for a carrier to, “by its own operating practices,” to limit the common carrier obligation simply because of a strike at shipper/consignees facility and it is “reprehensible” when carriers cooperate in such

limitations simply to appease their workforce). *See also Minneapolis & St. Louis Ry. v. Pac. Gamble Robinson Co.*, 215 F.2d 126 (8th Cir. 1954) (“*Gamble Robinson*”); *Pickup and Delivery Restrictions, California, Rail*, 303 I.C.C. 579, 593 (1958) (“*Pickup*”); *Louisiana Grocers Co-Operative, Inc. v. Illinois Central Gulf R.R.*, 353 ICC 606 (1977) (“*Louisiana Grocers*”).

## **II. UP’S EXCUSES FOR ITS FAILURE TO PROVIDE SERVICE ARE INVALID**

UP provides three excuses for ignoring its common carrier obligation to Sherwin: (i) philosophical differences regarding the ongoing labor dispute at the Sherwin plant (*i.e.*, UP will not ask its unionized employees to serve a plant where there is a picket line); and (ii) a theoretical threat to its unionized employees; and (iii) not enough management personnel to serve Sherwin. *Britton V.S.* at 7-9.

UP cannot cease service simply due to the work stoppage. Indeed, a work stoppage does not excuse UP from complying with the provisions of Section 11101(a) that require it to provide service upon request. As noted *supra*, the Board applies a strict standard when a railroad refuses to provide common carrier service; UP fails to meet such an exacting standard.

### **A. UP’s Philosophical Objection to Serving Sherwin is Invalid**

UP’s philosophical objection to serving the Sherwin plant is without merit. UP’s common carrier obligation is not a pick-and-choose obligation. Indeed, a federal appeals court expressly rejected a carrier’s predetermined decision to refuse service to a

facility where a strike was in progress. In *Gamble Robinson*, the court addressed claims of security threats to the carrier's employees and found them illusory. Instead, the court determined that "Railway Co. had, from the very start, before any problem of evaluating danger had arisen, determined as a matter of policy to avoid any possibility of friction with the striking union, by undertaking to furnish Gamble-Robinson only with such service as the union was willing to approve" and that the carrier's union employees were well aware of this policy and exploited it. *Id.*, 215 F.2d at 133. The railroad also failed to press upon its employees the carrier's obligations and the carrier erred because it "could not responsibly make the bald grace or whim of the union the measure of its duty or its attempt to furnish service." *Id.*, 215 F.2d at 134.

Likewise, the ICC rejected attempts by carriers to institutionalize avoidance of the common carrier obligation during a strike at a shipper/receiver facility. In *Pickup*, the ICC grappled with various carrier tariff rules generally stating "that 'nothing in this tariff shall require the carrier(s) to perform pickup or delivery' in specified situations arising out of, or related to, labor disputes." *Id.*, 303 I.C.C. at 580. The ICC concluded that the tariff language was "unjust and unreasonable." *Id.*, 303 I.C.C. at 595. The ICC reasoned as follows:

As derived from the common law the duty to serve all shippers making reasonable request for service was almost absolute, but a severely limited number of excuses for nonperformance was available to the carrier if the proximate cause therefor could be traced to (1) acts of God or (2) enemies of the King. Through the years the number of justifiable excuses has been expanded to include other

physical obstructions to service brought into play by a vis major. Additionally, the carriers have always been privileged to make reasonable rules to regulate the manner of their operation, a matter quite distinct from failure to render impartial service. At no time has the sanctity of the general rule which assures nondiscriminatory treatment of shippers been violated unless it could be demonstrated that the intervening forces were outside the legal control of the carrier and were susceptible of proof by objective facts. *The intangible barriers of peaceful picket lines coupled with union contractual provisions acquiesced in by the carriers constitute something less than the physical obstructions historically acceptable at common law. Indeed to accept such an excuse would be diametrically contrary to the accepted legal doctrine that parties may not by entering into a contract alter the rights of third parties.* The Interstate Commerce Act reinforces but does not abridge or alter the remedies existing at common law. Likewise the public interest lies in the direction of restraining possible discriminatory practices by the carriers. Therefore, unless or until Congress changes the public policy upon which the act rests, we cannot find lawful tariff rules violative thereof.

As indicated, none of the carriers' representatives was able to give a satisfactory explanation of the term "other labor disturbances," and *the mere existence of a strike or picketing does not necessarily prevent the performance of pickup or delivery service.*

*Id.*, 303 I.C.C. at 594-95 (emphasis added).

Simply put, UP cannot raise a generalized labor dispute-related objection to serving the Sherwin facility. In addition, UP cannot lawfully erect internal barriers to providing common carrier service to Sherwin.

**B. UP's Alleged Safety Concerns are Invalid**

UP claims that it cannot, or will not, ask its unionized employees to provide service to Sherwin because those employees may then claim to have been threatened by the picketers, and UP would then have no choice but to withdraw service regardless of the merits of such a claim. *Britton V.S.* at 8.

In *Louisiana Grocers*, the ICC held that "the mere appearance of a picket line or peaceful picketing does not usually justify failure to provide service." 353 I.C.C. at 609, citing *Pickup*, 303 I.C.C. at 593. Instead, there must be a real threat. *Gamble Robinson*, 215 F.2d at 132. Thus, UP cannot simply throw out an illusory threat and justify its refusal to serve.

For example, in *Gamble Robinson*, the court dealt with several incidents that might have been characterized as threatening; including strikers damaging cargo and surrounding cars that were to be switched (no threats were made other than indication that the foreman should not move the cars). The court, however, found that these incidents were not sufficient to excuse the carrier from its common carrier obligation. Conversely, in *Meier & Pohlmann Furniture Co. v. Gibbons*, 233 F.2d 296 (8th Cir. 1956), the court addressed a situation in which a strike at a furniture manufacturer resulted in a stabbing; interference with common carrier operation by the motor carriers serving the facility (including trying to force trucks onto curbs); and other serious threats. The same court of appeals that had decided the *Gamble Robinson* case concluded in the *Meier* case that "the operation of which plaintiff complains was impracticable and there

was substantial evidence that the carriers were acting in a reasonable and prudent manner” (*id.*, 233 F.2d at 296). The court therefore relieved the carriers of their obligation to serve the facility.

Here, unlike the situation in *Meier*, UP’s employees and supervisors were never threatened either before or during any picketing activities at the Sherwin plant. *See Britton V.S.* at 6. Indeed, no unionized employees of UP have even served the plant during the work stoppage. The picketers have been peaceful. In addition, local law enforcement is regularly positioned near the picketers. A private security firm specializing in labor dispute situations is also present. In other words, UP has not established that any threats formed the basis of its refusal to serve. Moreover, UP has no way to establish such a threat now since it has ceased operations at the Sherwin plant.

**C. UP’s Lack of Available Management Personnel is Not a Valid Excuse for Refusing to Serve Sherwin**

UP has represented to Sherwin that it cannot serve Sherwin using management employees because it does not have sufficient personnel to provide this service. *See Britton V.S.* at 1. UP’s refusal to provide common carrier service to Sherwin on this basis is a red herring, especially since UP continues to provide local train service to other entities located near Sherwin. *Id.* at 6. UP has complete control over how to serve Sherwin. If it does not have sufficient management personnel to provide regular lime service then it can simply order its unionized employees to provide the service since there is no valid basis to refuse service in the first place.

UP's position was specifically rejected in *Louisiana Grocers*. There, certain employees of the shipper went on strike in April 1975. Unlike Sherwin's situation, the railroad continued to provide switching service using supervisory personnel, but the frequency of the switching interval grew from 1 day to 4 days after arrival of the cars in the carrier's yard (similar to the reduced service that UP management employees provided for 3 ½ weeks following the work stoppage in the instant matter). The cooperative continued to press for more service, and in November 1975, the carrier relented and ordered its regular switch crews back to work. The shipper filed a complaint with the ICC alleging that the service provided from April to November 1975 had been inadequate.

The ICC agreed holding that: "[i]t is clear that a complete failure by a carrier to cross a picket line to perform transportation service, except where excused by a reasonable attempt violates section 1(4) [of the Interstate Commerce Act].<sup>4</sup> *Id.*, 353 I.C.C. at 608.

The ICC also criticized the railroad for not ordering its employees to provide the service between April and November 1975:

No reason appears on the record as to why [the railroad] failed to direct that its employees resume switching the cars to complainant's siding until November 17, 1975, which could have avoided the delay. We note that the mere appearance of a picket line or peaceful picketing does not

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<sup>4</sup> The relevant provision of the former Interstate Commerce Act is now codified at 49 U.S.C. § 11101.

usually justify failure to provide service. *Pickup and Delivery Restrictions, California, Rail*, 303 I.C.C. 579, 593 (1958).

*Id.*, 353 I.C.C. at 609. Moreover, the ICC noted that the supervisory service provided by the railroad was not adequate over time and that “[r]epeated delays in delivery of this nature over a substantial period of time is a violation of a carrier’s duty to furnish reasonably prompt transportation.” *Id.*, citing *Montgomery Ward & Co., Inc., v. Consolidated Freightways*, 42 M.C.C. 225 (1943).

In light of *Louisiana Grocers*, UP’s complete cessation of service simply because it chose not to staff Sherwin’s service is invalid. Even UP’s twice-weekly service provided by management personnel for 3 ½ weeks would be inadequate on an ongoing basis. Thus, it is incumbent on UP to restore regular lime service.

### CONCLUSION

As explained above, UP provided service five days a week at Sherwin’s plant for many years. Thus, by definition, the restoration of such service is reasonable. Moreover, UP’s refusals to serve have not been based on the regular level of service that Sherwin requires, but instead on the invalid excuses addressed above. As such, Sherwin requests that the Board’s order specifically restore the regular service Sherwin enjoyed before the work stoppage began.

Sherwin requests that the Board promptly enter an order compelling UP to provide rail transportation services for lime shipments in accordance with Sherwin’s reasonable service requirements.

Respectfully submitted,

SHERWIN ALUMINA COMPANY, LLC

By: Daniel M. Jaffe   
Katherine F. Waring  
Slover & Loftus LLP  
1224 Seventeenth Street, N.W.  
Washington, D.C. 20036  
(202) 347-7170

Attorneys for Sherwin Alumina  
Company, LLC

Dated: March 10, 2015

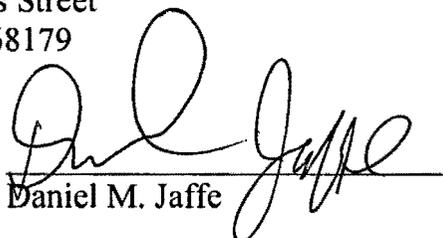
CERTIFICATE OF SERVICE

I hereby certify that I have this 10th day of March, 2015, caused a copy of the foregoing Petition and accompanying Verified Statements to be served by overnight delivery service upon the chief legal officer of Union Pacific Railroad Company, as follows:

Gayla L. Thal, Esq.  
Senior Vice President - Law and General Counsel  
Union Pacific Railroad Company  
1400 Douglas Street  
Omaha, NE 68179

With a courtesy copy by email to:

Louise A. Rinn, Esq.  
Regulatory Counsel  
Union Pacific Railroad Company  
1400 Douglas Street  
Omaha, NE 68179

  
Daniel M. Jaffe

Britton V. S.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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SHERWIN ALUMINA COMPANY, LLC	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 42143
	)	
UNION PACIFIC RAILROAD COMPANY)	)	
	)	
Respondent.	)	
	)	

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**VERIFIED STATEMENT OF  
KENT BRITTON**

My name is Kent Britton. My address is 4633 Highway 361, Gregory, TX 78359. I am the Chief Financial Officer of Sherwin Alumina Company, LLC (“Sherwin”), a position that I have held since September 2012. In this capacity, I am responsible for all financial aspects of Sherwin’s business, including procurement, accounting, and finance. I am one of the company’s representatives in our current labor negotiations.

The purpose of my verified statement is to address the impact that the Union Pacific Railroad’s (“UP”) reduction and later cessation of service has had on the Sherwin plant. In brief, following a work stoppage of the United Steel Workers-represented (“USW”) employees at the Sherwin plant in October 2014, UP refused to provide rail service to us, citing its unwillingness to ask its unionized employees to serve

Sherwin and its inability to staff Sherwin's service with management employees. UP's actions have had a significant effect on Sherwin's operations and finances, and the lack of UP service continues to be a grave threat to Sherwin.

## **I. Background**

Sherwin is a leading producer of alumina, and one of the few alumina producers in the United States. Alumina (aluminum oxide) is extracted from bauxite ore, and then refined to a white powdery substance similar to flour. Alumina is used as a starter material in aluminum smelting, as well as an additive to many other products.

The Sherwin Alumina plant is located in Gregory, TX, which is situated along the Gulf Coast of Texas in the greater Corpus Christi area. The Sherwin plant has been in operation for more than 60 years. Today, the facility sits on over 1,600 acres, includes two deep water docks, five digesters, and enough capacity to produce 1.6 million tons of alumina per year.

Reynolds Metal Company originally developed the facility, and it was expanded several times. The plant was acquired by Alcoa through its takeover of Reynolds in 2000, and then transferred hands multiple times over the next seven (7) years before being purchased in 2007 by Glencore, a Swiss multi-national commodity-trading and natural resources development company that ranks No. 10 on the Fortune Global 500 list. Glencore also assists with the marketing of alumina produced by Sherwin. Despite Glencore's involvement, Sherwin remains, however, a separate limited liability corporation.

Sherwin employs 600 total employees: 450 unionized workers represented by the United Steel Workers and 150 management and salaried employees. The Sherwin plant supports another 1,500 jobs in the community.

Sherwin Alumina produces two different forms of alumina: smelter-grade alumina and chemical-grade alumina. The smelter grade alumina is Sherwin's primary product. This product is shipped to smelters around the world from our on-site ship loading facility.

Sherwin's chemical-grade alumina business, while smaller than our smelter-grade business, nevertheless provides a critical product to our customers because very few facilities produce such alumina. The 178,000 metric tons of chemical-grade alumina that Sherwin produces and ships by rail (less than 7% is moved by truck) annually are used in a wide range of products, including airplanes, beer cans, fire-retardant carpet, seat cushions, toothpaste, deodorant, antacid and artificial marble.

The production process at Sherwin relies on a variety of different raw materials including bauxite ore, which is brought by ship from Jamaica and other sources; caustic soda, provided by a nearby chemical production facility; and most importantly for this present matter, lime from quarries near San Antonio, TX.

Sherwin requires 300 tons of lime a day. Without lime, alumina cannot be produced, and the plant would cease operations. UP and its predecessor railroads have transported Sherwin's lime for many years. UP is the only railroad that can serve the Sherwin plant. In recent periods, the lime was shipped under common carrier rates and service terms.

Since UP's cessation of service on November 6, 2014, Sherwin has received no lime deliveries from UP. Instead, Sherwin has had to rely on truck transportation, which is unreliable in many respects, difficult to handle at the plant, and extremely expensive to ship vis-à-vis moving lime by rail. Mr. George Gleditsch, our Procurement Manager, addresses these difficulties in more detail in his verified statement.

For reasons unrelated to UP's service refusal, the Sherwin plant has been operating in recent months at approximately 80% capacity. This coincidental change in production helped maintain our limited stores of lime, but by July 2015, we may increase production. Without rail service and attendant lime deliveries, Sherwin could experience serious adverse impacts. Thus, Sherwin's need to restore rail service is urgent.

In addition to not receiving any lime, Sherwin has been unable to ship chemical-grade alumina to its customers, and some of our customers have no alternative source of this vital product. While those shipments are covered under a contract with UP, we note that UP is not providing service through any form of transportation arrangement.

## **II. Labor Issues at the Sherwin Plant**

As I noted earlier, Sherwin has a unionized workforce of 450 people represented by the USW. Historically, labor disputes have been uncommon at Sherwin. Regardless, no labor negotiation is simple, and Sherwin always prepares contingency plans in the event of a labor dispute. Thus, in April 2014, we began looking at the rail-related issues that might arise if a work stoppage occurred; Mr. Gleditsch explains these efforts in his verified statement. Sherwin first met with the union representatives to

discuss a new contract on July 8, 2014, and we met on a continuing basis with the union representatives thereafter. On October 1, 2014, we provided our last, best, and final offer to our unionized employees. The union informed us that a vote would occur on October 10, 2014. The union held the vote as planned, and the members rejected the contract offer by a vote of 98% to 2%. After the clear rejection of our best, last and final offer, on October 11, Sherwin locked out the bargaining unit employees. It is unclear when the labor dispute will end and a new collective bargaining agreement will be signed, but Sherwin remains hopeful that a resolution can still be reached, and continually stands ready to bargain on all issues in good faith.

### **III. Post-Work Stoppage Conditions**

After the work stoppage on October 11, 2014, the union established a picket line almost immediately. Sherwin was fully prepared for the picket line. We clearly marked our property line along Highway 361 – the main road that fronts the Sherwin plant property. The county sheriff's office delineated specific areas for the picket line to be positioned to ensure the safety of the employees and prevent traffic disruptions. Sherwin then enlisted the aid of off-duty sheriff's deputies to ensure that there are no traffic issues or other problems. Sherwin also engaged a specialized private security firm to man external checkpoints in the vicinity of our plant, and ensure that any picketers are complying with applicable rules for such activities.

The checkpoints are operated 24 hours a day, 7 days a week. More importantly, no illegal activities have been reported on the picket lines. Indeed, many

contractors and suppliers regularly enter and exit the Sherwin property, all without incident.

UP's experience was no different than those of every other supplier that has served the Sherwin plant since the work stoppage began. Indeed, during the period between October 1 and November 6, 2014, when UP provided twice-weekly train service with UP management personnel, no incidents were reported. Those management employees were never harassed or threatened by any of the people picketing along the Sherwin property line. In fact, we understand from Brad Thrasher (UP's Vice President of Industrial Products), that only one interaction between the picketers and a UP employee occurred during this period. Specifically, during one delivery, a management train operator was asked what he was doing serving Sherwin. When he explained who he was and why he was there, the conversation ended.

The subject rail line is adjacent to the main road entering the facility, and while the picket line is near the rail line, the picketers are not allowed to stand on or around the rail line for safety reasons. However, Sherwin has offered to increase security around the rail line if that would assuage any unexpressed concerns of UP, but UP has not expressed any interest in Sherwin's offer. We also note that UP continues to provide local train service to other entities located near Sherwin, including OxyChem and DuPont, which are directly adjacent to the Sherwin facility. Thus, UP clearly has the resources to serve Sherwin just as it did before the work stoppage, but it simply refuses to do so.

The picket line is still active but the level of activity has subsided in recent weeks. Usually there are anywhere between 2-18 people on the picket line. There are some days when nobody is on the picket line, usually during bad weather. It is especially frustrating that UP will not even provide service when there are no picketers. In such a case, UP would not have to cross any picket line, which we understand is its primary objection.

#### **IV. Communications with UP**

Following the beginning of the work stoppage, I began communicating directly with Mr. Thrasher. We had two telephone conversations: one on October 28, 2014, and another on December 9, 2014. In addition, we exchanged limited correspondence via email.

In a letter dated October 22, 2014, I asked Mr. Thrasher to reconsider his position with respect to outbound alumina, and by extension, lime service since there would be little point of providing only outbound service.<sup>1</sup> Mr. Thrasher refused. In a letter dated October 28, 2014, Mr. Thrasher reiterated UP's position that "normal service by Union Pacific's union-represented employees is not a practicable solution." Mr. Thrasher then went on to explain UP's limitations with respect to management employees providing such service.<sup>2</sup>

Notwithstanding the adverse letter, Mr. Thrasher and I spoke on October 28, 2014. The call was cordial, but Mr. Thrasher continued to express his concerns about

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<sup>1</sup> The letter is attached hereto as Attachment A.

<sup>2</sup> Mr. Thrasher's letter is attached hereto as Attachment B.

UP's unionized employees' likely reaction to being asked to serve the Sherwin plant. In addition, he suggested that if forced to do so, UP might face unspecified ramifications from its own unions. Likewise, he indicated that UP's employees would claim they were threatened, at which point UP would not require them to serve Sherwin. In other words, Mr. Thrasher took the position that there was no value in even asking UP's employees to serve Sherwin, and that UP was not going to make any additional efforts to serve Sherwin notwithstanding any obligations that UP had in this regard.

In response, Sherwin offered alternative solutions, some of which Mr. Gleditsch had previously suggested, such as paying UP extra to bring in management employees; using an UP-approved contractor to serve Sherwin; and using Sherwin personnel to push cars out onto UP's portion of the line past the plant property line. UP rejected all of these alternatives. UP did, however, extend our service for an additional week to November 6, 2014.

In November 2014, Sherwin approached the Surface Transportation Board's ("Board") Office of Rail Consumer and Public Assistance concerning UP's cessation of service. We understand that Board staff contacted UP in an effort to assist Sherwin in the restoration of service. UP, however, refused again.

During the first week of December, I attempted to set up a face-to-face meeting at UP's headquarters in Omaha, but Mr. Thrasher refused. He did, however, agree to an additional phone call.

On December 9, 2014, I once again called Mr. Thrasher in an attempt to restore service. I noted to Mr. Thrasher that the picket line was lightly manned and that

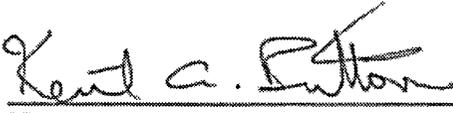
there had been no incidents with the picketers. I also emphasized that Sherwin was prepared to work with UP on almost any alternative to provide service directly to the plant. UP rejected all such efforts.

Mr. Thrasher then stated that UP was not concerned with physical boundaries or physical presence but was instead concerned with the “philosophical” problems associated with serving Sherwin, namely that UP did not want to ask their unionized employees to serve Sherwin based on their potential objection to serving a plant being picketed. And despite not being concerned about the physical presence of a picket line, he then suggested that the perceived threat of crossing a picket line was enough to get UP’s unionized employees out of serving Sherwin – even though no unionized employees had even tried to serve Sherwin or had been threatened in any way.

In a final attempt to restore lime service to the Sherwin plant, on December 24, 2014, I sent a letter to Mr. Thrasher (transmitted by Mr. Gleditsch) requesting that UP disclose its common carrier rates and service terms for lime shipments from Sherwin’s two lime suppliers: LHoist and Austin Lime, both located near San Antonio, TX. As Mr. Gleditsch explains in detail in his verified statement, Mr. Thrasher responded, on January 2, 2015, that the applicable rates are those in UP Tariff 3200. From there, Sherwin requested two single car shipments of lime, one from each origin. As explained in the verified statements of Sherwin’s other employees, UP picked up the lime and brought it to the Gregory, TX yard near the Sherwin plant, but then refused to bring those cars to the plant. I have not had any additional communications with UP.

## VERIFICATION

I, Kent Britton, verify under penalty of perjury that I have read the foregoing Verified Statement and know the contents thereof; and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.

  
Kent Britton

Executed on: March 10, 2015



## SHERWIN ALUMINA COMPANY, LLC

October 22, 2014

Via E-Mail & FedEx

Mr. Brad Thrasher  
Vice President and General Manager - Industrial Products  
Union Pacific Railroad Company  
1400 Douglas Street, Stop 0310  
Omaha, NE 68179

Re: Transportation under UPCQ 81351.018

Dear Mr. Thrasher:

Sherwin Alumina ("Sherwin") and its predecessors are long-time customers of the Union Pacific Railroad ("UP"). We transport approximately 3,500 shipper-supplied cars per year and spend \$3.5 million annually with UP, carrying both outbound customer product and inbound lime, which is a critical component of our production process. UP's rail service is essential to the operation of our facility, neighboring facilities and the community at large.

Sherwin has no feasible means of moving certain goods to market or receiving critical raw material inputs without UP rail service. Trucking is infeasible due to Texas environmental rules and the distances involved. Trucking and transloading is likewise of limited value given the added costs and purity requirements of our product and could only be used as a stop-gap measure. Thus, without regular and reliable service from UP, Sherwin could be forced into a range of options up to and including shuttering our operations, which would put more than 600 employees out of work and have cascading impacts throughout the Corpus Christi area.

For example, another large chemical company, located adjacent to the Sherwin plant, provides caustic soda, a raw material required in the production of alumina, and a significant portion of their output of that product is dedicated to serving our facility. That company, as well as others, would likely suffer economic disadvantage if Sherwin stops operating – even for a short time. Collectively, these facilities employ a large number of people in the region.

On October 10, 2014, the labor union representing 450 employees at Sherwin's Gregory, TX facility rejected the Company's final offer for a new labor agreement. As a result, these employees are currently locked out, and while we hope that an agreement will be reached in the near term that can end this dispute, operations at the plant must and are continuing. Sherwin has, therefore, made necessary arrangements to keep the plant operations running indefinitely.

Sherwin was in regular contact with UP regarding service contingencies in the event of a lockout. Sherwin repeatedly indicated that operations would continue normally and that UP's normal service to the facility would be required regardless of a potential labor dispute.

UP seemingly ignored Sherwin's communications. Only after contacting Mr. Cameron Scott's office did UP respond to our concerns. Regrettably, UP's response failed to address our concerns. UP stated verbally, and much later by email that it intended to provide only three weeks of reduced service following any lockout or strike condition at the plant. UP has never stated what level of service Sherwin can expect

Sherwin Alumina Company, LLC

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P. O. Box 9911 · Corpus Christi, Texas 78469 · [www.sherwinalumina.com](http://www.sherwinalumina.com)

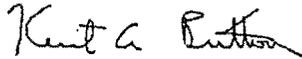
after the three week period of reduced service concludes on October 30, 2014, but Sherwin assumes that UP intends to cease operations to and from the plant at that point.

UP has no basis to cease or reduce service to the Sherwin facility. Sherwin and UP are parties to an agreement, UPCQ 81351.018. The fundamental purpose of the Agreement is to provide for the transportation of product from the Sherwin facility to specified destinations. UP's service obligation does not cease under the Agreement simply because a lockout condition exists at Sherwin. Moreover, UP faces no threat of violence from the locked out employees or even a picket line at the rail facility entrance. Thus, there is no difference in circumstances at the Sherwin facility than existed prior to October 11, 2014, and even if a picket line should exist, UP is still obligated to use reasonable efforts to meet its obligations under the Agreement.

In light of the circumstances, Sherwin has reasonable grounds for insecurity with respect to UP's willingness to continue its performance under the Agreement. Sherwin, therefore, requests that UP provide adequate assurances that it will continue normal operations to the Sherwin facility.

As time is of the essence, we would appreciate your written response by October 24, 2014, which can be emailed to me at [kabritton@sherwinalumina.com](mailto:kabritton@sherwinalumina.com).

Sincerely,



Kent Britton  
Chief Financial Officer

October 28, 2014

Via Email

Mr. Kent Britton  
Chief Financial Officer  
Sherwin Alumina Company

Dear Mr. Britton,

Thank you for contacting me about your current situation at the Sherwin Alumina plant in Gregory, Texas. As you stated, Sherwin Alumina and Union Pacific have enjoyed a longstanding relationship, and we very much appreciate your business as we do with all of our customers throughout the Corpus Christi area.

I understand that the labor agreement between Sherwin Alumina and the United Steelworkers Union expired on September 30, 2014, and that as a result, Sherwin Alumina locked out its union-represented employees from the Gregory plant on approximately October 11. Per previous communications between Union Pacific and Sherwin Alumina staff, Union Pacific indicated that we would be able to provide twice weekly service to the plant for up to three weeks with our limited resource of management crews from the onset of your labor disruption.

In May, George Gleditsch and LaKeisha Gatson-Dunham discussed the possibility of a strike and the potential impact a strike would have on Union Pacific's ability to serve the plant. In response, Union Pacific put your team in communication with our Operating and Labor Relations managers who reviewed the obstacles to service that strike situations present, including safety concerns that consistently arise in connection with labor picketing. Well in advance of the agreement's expiration, on July 23, 2014, Union Pacific communicated our contingency capabilities to service Sherwin Alumina. The contingency service plan was designed to provide Sherwin Alumina with sufficient time to arrange for alternative service options, including trucking and/or transloading options. UP personnel also provided contact information for those industries to your team as well as rates to various transload alternatives in the Corpus Christi area.

Based on the significant interactions between our employees at all levels within our company preceding the expiration of Sherwin's labor agreement, Sherwin Alumina cannot claim surprise that Union Pacific was not in a position to provide regular service following Sherwin's decision to lock out its employees. As previously explained to Mr. Gleditsch, normal service by Union Pacific's union-represented employees is not a practicable solution. Service to the facility may only be provided only by management crews during a labor dispute.

Our management staff in the Gregory area works extremely hard supporting our TE&Y team members, managing network flows throughout the area and are very focused on providing service to/from our entire customer base in the Corpus Christi in addition to Sherwin Alumina. As such, UP is simply not in a position based on our limited management personnel, safety considerations, and the press of service requirements across our entire customer base to continue serving Sherwin Alumina for an extended time with our limited management staff.

We very much value our relationships with Sherwin Alumina and while we ask that our managers go above and beyond their normal duties, they are also subject to the same Federal regulations for hours of service and at some point, simply do not have the capacity to perform switching in addition to their regular duties as management personnel.

UP's position has not changed; discontinuation of this level of service is consistent with what was communicated by our marketing, operating, labor relations and customer service personnel in conversations with Sherwin Alumina going as far back as May of this year. Union Pacific is simply just not resourced to extend management service at the current level past October 30, 2014.

Sherwin Alumina also indicated that transloading was not a viable alternative due to purity concerns for your products. I do not have a full understanding of your product requirements yet but we work with transloaders across the United States on a daily basis to transload and safely handle even food grade commodities such as plastics, perishables, flour, sugar, grain products, etc. and we remain very willing to work with Sherwin Alumina on alternative transload options in the area if you so desire.

I can assure you that when your Company has resolved its dispute with its union-represented employees, Union Pacific will be in a position to provide the plant with regular service. We are hopeful that Sherwin Alumina can come to a speedy resolution of the current labor dispute. If you desire, we are very willing to schedule a conference call with you and your team tomorrow to discuss our current capabilities and alternatives.

Best regards,

Brad Thrasher  
VP & General Manager – Industrial Products

Gleditsch V. S.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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SHERWIN ALUMINA COMPANY, LLC	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 42143
	)	
UNION PACIFIC RAILROAD COMPANY	)	
	)	
Respondent.	)	
	)	

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**VERIFIED STATEMENT OF  
GEORGE GLEDITSCH**

My name is George Gleditsch. I am the Procurement Manager at Sherwin Alumina Company, LLC ("Sherwin"), a position that I have held since January 2013. My business address is 4633 Highway 361 Gregory, TX 78359. In my capacity as Procurement Manager, I am responsible for purchasing approximately \$500 million of products and services for the plant, including: natural gas; electricity; steel components; miscellaneous hardware the plant consumes; contract labor work; and other items. My role is, thus, to ensure a consistent supply chain of required materials and labor. I also procure lime for the facility and oversee the shipment of that lime to the plant by the Union Pacific Railroad ("UP").

The lime we purchase for the plant is classified as STCC 3274110, Bulk Crushed Quicklime. The lime is a critical component in the production process at the plant. Specifically, as part of the Bayer process for the refining of alumina from bauxite

ore, lime is added early in the process to control the phosphorus content and aid in the solubility of the slurry that will ultimately become refined alumina. Without lime, Sherwin cannot produce refined alumina products.

As explained in Mr. Britton's Verified Statement, Sherwin's unionized workforce refused a last, best and final contract offer, which resulted in a lockout of those employees on October 11, 2014. This, in turn, prompted UP to change its rail service to twice-weekly service for 3½ weeks before UP halted service completely on November 6, 2014.

The purpose of this Verified Statement is to address the impact that UP's reduction and later cessation of rail service has had on the plant, particularly with respect to lime. In short, UP's actions in recent months have had a negative effect on Sherwin's operations and finances. My Verified Statement also addresses the various interactions I had with UP prior to and following the commencement of the work stoppage at the plant. Finally, I address the plant's lime requirements and how UP had been meeting those requirements prior to the work stoppage.

In my capacity as Procurement Manager at Sherwin, I have a close working knowledge of Sherwin's relationship with UP. Most of my contact with UP was through Robert Johnson (a local terminal manager in the Gregory, Texas area) and LaKeisha Gatson-Dunham (a UP marketing representative). The majority of our logistic-specific interactions with UP were handled by Sarah Waldhelm, one of our logistics employees, or Hector De La Garza, a plant employee responsible for the movement of railcars within the plant property by Sherwin employees or contractors and to and from UP.

**I. Pre-Work Stoppage Relationship**

**A. Typical Lime Service**

Sherwin's alumina plant requires approximately 300 tons of lime a day to operate under normal conditions. The plant operates 24/7/365, except for certain planned outage periods. Before the work stoppage, Sherwin consumed about 300 tons of lime a day, almost all of which was delivered by rail. The required lime was purchased from two quarries in Texas: Lhoist located near Dittlinger, TX and Austin White Lime located near McNeil, TX. Sherwin has contracts with both suppliers, and under those agreements, Sherwin and the quarries coordinated with each other and UP to ensure a steady flow of lime to the plant. Sherwin's plant was served five days a week by local train crews operating out of Gregory, TX. Lime was delivered in groups of 2-20 cars, on average, several days a week.

Under the typical shipping arrangements, the quarries would be designated as the shipper in the bill of lading and Sherwin as the consignee. However, UP sent all freight bills to Sherwin for payment, which payments Sherwin made. The quarries were not responsible for any such payments. The shipments were all handled in common carrier service. There were, and are, no applicable contracts between Sherwin, the quarries or UP for the movement of lime to the plant.

**B. Contacts with UP Regarding Rail Service to the Plant in the Event of a Work Stoppage**

I interacted occasionally with UP prior to April 2014, particularly when service issues or other items became relevant to supply chain fluidity and costs. With a

major labor negotiation pending, however, I prepared to ensure the fluidity of the supply chain, and I increased my communication with UP and other vendors. Thus, in April and May 2014, I increased my interactions with UP. I repeatedly contacted UP representatives—mainly Ms. Gatson-Dunham—to discuss measures we could take to ensure uninterrupted rail service from UP in the event of a work stoppage. I emphasized that the plant would continue to run normally in such event, and that we expected UP to continue to provide regular service to the facility as well. During this time period, UP did not provide any answers to my queries regarding service in the event of a work stoppage.

In the summer of 2014, I became increasingly concerned about UP's service to Sherwin in the event of a work stoppage. Through my regular communications, I learned that UP might not provide service if a work stoppage occurred, or that only reduced service provided by management employees might be available. Despite my many attempts to secure a definitive answer from UP to this critical question, UP refused. Instead, all communications from UP were oral (by phone) and each communication was, for lack of a better explanation, unofficial. Regardless, the unofficial party line was that UP's regular crews would refuse to cross a picket line; that UP would not force them to do so; and that UP was short on management employees in Gregory and elsewhere. As such, service would be limited if management employees had to perform the work.

I was alarmed by UP's suggestions that service might cease. In order to prevent such an occurrence, between July and October 2014, I communicated at least five offers of assistance to UP to ease any concerns or roadblocks that UP might have,

including: financial support if UP would bring in additional management employees to serve the plant; offers to engage a UP-approved rail operations contractor to move rail cars off of the Sherwin property to reach UP's nearby yard or at least UP-owned track outside the fence line of Sherwin's property; and offers to use Sherwin-owned locomotive equipment to reach UP. I made it very clear to UP that we were willing to do anything possible to ensure that service continued. Nevertheless, UP categorically rejected all of my offers of assistance. The only rationale that UP mentioned for its rejections of such offers was a vague concern about "surface rights" which they said somehow foreclosed the options I put on the table. UP essentially ignored my offer to compensate them for shifting management employees to the Corpus Christi/Gregory area to supplement service to Sherwin.

As noted, despite my efforts to discuss the matter and hopefully agree on a plan to address my service concerns, UP was very unresponsive and non-communicative. However, I repeatedly reached out to UP personnel at higher levels within the company, usually within the operating department.

On July 17, 2014, I spoke with Marine Reininger who is an administrative assistant to Cameron Scott, the Executive Vice President of Operations. Ms. Reininger told me that Mr. Scott would call the next day. On Friday, July 18, Mr. Scott called and offered to align UP's operating resources to provide an answer on the services we could expect. This led to a follow-on conversation with Mr. Ramiro Barba, who conveyed that UP would only provide service twice per week for two (2) weeks. When I challenged Mr. Barba for a rationale on the limits of service, he responded that he was passing along

the directives of Mr. Greg Workman, UP's Regional Vice President (South). When I requested to speak with Mr. Workman, Mr. Barba originally said he would arrange it and wanted to give Mr. Workman advance notification of our call. However, despite repeated requests to Mr. Barba to allow a direct conversation with Mr. Workman, he refused to participate in a conference call to discuss the limitations on Sherwin's service.

On Wednesday, July 23, I called Mr. Scott again, and this time a different administrative assistant answered. Again, I was promised that Mr. Scott would call me. My subsequent conversation eventually prompted UP to offer some convoluted, alternate methods to transload lime from railcars into trucks for delivery to the plant, none of which made any fiscal sense.

Finally, on October 28, 2014, Brad A. Thrasher, VP & General Manager – Industrial Products, emailed me a letter stating that the Sherwin plant would only receive two weeks of reduced service (twice per week) in the event of a work stoppage, and that service would cease thereafter. Mr. Thrasher did not provide a reason why Sherwin would only receive two weeks of reduced service nor did he explain UP's rationale for ceasing service. Mr. Thrasher's letter is attached to Mr. Britton's Verified Statements as Attachment B.

Beginning in August 2014, I continued to regularly advise UP—mainly by contacting Ms. Gatson-Dunham, Mr. Barba, and Mr. Johnson—about the situation at the plant. I provided consistent updates to UP at least every two weeks. Again, I did not receive any responses.

### **C. Preparations for a Work Stoppage**

Given the critical requirements for lime, we began storing rail cars and stockpiling lime reserves because we were anxious that without UP service, Sherwin would be unable to operate. Eventually, Sherwin was able to stockpile as many as 50 rail cars that were designed to act as emergency reserve.

While attempting to keep UP service going, I also reached out to our lime suppliers to discuss alternative options. The only option was to truck the lime. However, trucking lime is a poor substitute for rail service for several reasons. First, lime costs \$15-\$20 more per ton to ship by truck than by rail, and that additional cost does not reflect the increased handling costs at the plant.

Second, truck service is often unreliable. The quarries do not have dedicated fleets of trucks and neither does Sherwin. East Texas has a high demand for truck service given the oil and gas work in the Eagle Ford shale area. Thus, ensuring regular trucking service, at any price, is challenging. Indeed, as explained below, we recently had to enlist a third quarry to ensure adequate supplies of lime.

Third, the Sherwin plant is not designed to handle regular trucking of lime. The facility has very little lime storage (our silo can only hold a couple of days of lime). Lime is, therefore, regularly stored in railcars on site and offloaded as needed. If trucks are used, we must shift the lime from trucks to railcars and then to the silo or the production line.

Fourth, trucking is inefficient. We need four trucks for every one railcar of lime. To meet our requirements, we need 10-12 trucks every day, and the plant was simply not designed to handle this number of trucks on a regular basis.

### **III. Post-Work Stoppage Issues**

UP followed through on its threat to provide only limited service for a short period and then cease serving the plant. Recognizing the inevitable, I pressed to have as much lime delivered and alumina shipped as possible before UP ceased serving Sherwin. The two-day-a-week service UP provided for 3½ weeks was not ideal, but at least it provided a lifeline for Sherwin. In the end, UP ceased service, and Sherwin has been dealing with the aftermath of that decision ever since.

Sherwin's need for lime has not abated. The plant continues, with minor differences, to operate as it did before the work stoppage, but keeping the lime supply consistent is problematic without UP service. Sherwin's only option to keep lime shipments flowing is the costly and inefficient use of trucks. The lack of rail service has also shut down Sherwin's shipments of outbound chemical-grade alumina ("CGA"), Sherwin has a very limited ability to load CGA directly into trucks, thereby making normal shipments impossible.

As I have explained, trucking is challenging. The lime that Sherwin stockpiled in railcars before the work stoppage is running out. When the work stoppage began, Sherwin had approximately 50 railcars of lime stored – a roughly 20-day reserve. Truck shipments were not keeping up with Sherwin's needs and the 50-car supply dropped to 20 cars, and some of those cars are not even full. This shortage forced

Sherwin to seek out a third supplier. However, the supplier, U.S. Lime, can only move lime by truck and it is located much farther away than our other lime suppliers, thereby increasing our costs even more.

Given the challenges of shipping by truck, Sherwin decided once again to approach UP about providing service notwithstanding its prior refusal to keep serving Sherwin. Thus, on December 24, 2014, I emailed a letter from Mr. Britton to Mr. Brad Thrasher, Vice President-Industrial Products for UP, requesting that UP disclose the common carrier rates and service terms applicable to the movement of lime from Lhoist and Austin Lime to the plant.<sup>1</sup> In addition, consistent with UP's requirements in Tariff 6007, I transmitted two faxes to UP requesting the same disclosure of rates and service terms.<sup>2</sup>

On January 2, 2015, Mr. Thrasher responded that the applicable rates could be found in UP Tariff 3200.<sup>3</sup> From there, I reached out to Lhoist and Austin Lime to set-up a shipment from each location. In addition, Sherwin would act as shipper. Once the arrangements were in place, I directed Ms. Waldhelm to have stored railcars brought back into service and sent to the quarries with the intention of having them loaded at the quarries and delivered to Sherwin. Those arrangements were made. The lime was loaded and UP picked-up the cars and transported them to Gregory, TX. However, UP refused to bring the cars the last mile to the plant. Ms. Waldhelm provides more details of the

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<sup>1</sup> The email is attached hereto as Attachment A.

<sup>2</sup> The two request forms are attached hereto as Attachment B.

<sup>3</sup> Mr. Thrasher's email is attached hereto as Attachment C.

shipments in her Verified Statement. Regardless, UP has once again refused to serve the Sherwin plant.

**VERIFICATION**

I, George Gleditsch, verify under penalty of perjury that I have read the foregoing Verified Statement and know the contents thereof; and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.

  
\_\_\_\_\_  
George Gleditsch

Executed on: March 10, 2015

December \_\_, 2014

Via E-Mail & FedEx

Mr. Brad Thrasher  
Vice President and General Manager - Industrial Products  
Union Pacific Railroad Company  
1400 Douglas Street, Stop 0310  
Omaha, NE 68179

Reference: Common Carrier Rate and Service Terms for Transportation of  
Bulk Crushed Quicklime from McNeil and Dittlinger, TX to  
Gregory, TX

Dear Mr. Thrasher:

In accordance with 49 U.S.C. § 11101 and 49 C.F.R. Part 1300, Sherwin Alumina Company, LLC ("Sherwin") hereby requests that Union Pacific Railroad Company ("UP") either (a) disclose the existing common carrier rates, charges and service terms that will apply to the transportation described in Attachment A to this letter; or (b) establish and disclose reasonable common carrier rates, charges and service terms for application to said transportation. Please provide the requested information, in writing, to the undersigned as soon as possible and, in any event, in compliance with the above-referenced requirements.

Also attached to this letter is a copy of the completed formal rate information request form set forth in Item 701 of UP Tariff 6007-B. The completed form is being faxed today to UP Pricing Services pursuant to Item 700 of Circular 6007-B.

If you require clarification of any aspect of our request, please contact me, and we will do whatever is necessary to resolve it as quickly as possible.

Sincerely,

Kent A. Britton

## ATTACHMENT A

Commodity: Bulk Crushed Quicklime under STCC 3274110.

Origins: Austin White Lime Company quarry at McNeil, TX  
LHoist Quarry at Dittlinger, TX

Destination: Sherwin Alumina Company, LLC alumina plant at  
Gregory, TX

Route: UP direct.

Type of Service: Manifest (non-unit train) service.

Volume: Manifest service with annual volumes generally  
consistent with historic levels transported from McNeil  
and Dittlinger, TX to Gregory, TX

Equipment: Shipper and railroad-provided covered hoppers  
consistent with historic practices.

Expected Volume  
Per Car: 100 tons

Shipment size: 1-12 cars

Commencement  
of common carrier  
movements:: No later than January 1, 2015.

Loading and  
Unloading: Per applicable UP tariff requirements.



UP 6007-B

 Item: 701  
 FORMAL RATE INFORMATION REQUEST FORM

**FORMAL RATE INFORMATION REQUEST FORM**
**UNION PACIFIC RAILROAD**  
**Sec. 11101 Formal Rate Information Request**  
 (Check one): New  Existing 

 SEND: FAX # 402-501-0162  
 UP - Pricing Services  
 1400 Douglas Street, STOP 1340  
 Omaha, NE 68179-1340

 -----  
**COMMODITY DESCRIPTION: Bulk Crushed Quicklime**
**STCC(minimum 3 digits): 3274110**
**ORIGIN STATION: McNeil, TX (Austin White Lime Facility)**  
 Serving carrier(s), if known: Union Pacific Railroad Company

**DESTINATION STATION: Gregory, TX (Sherwin Alumina Plant)**  
 Serving carrier(s) if known: Union Pacific Railroad Company

**EQUIPMENT TYPE(S): Covered Hoppers**

 Name: Kent A. Britton, Chief Financial Officer  
 Mailing Address: P.O. Box 9911, Corpus Christi, TX 78469  
 Telephone: 361-777-2442  
 FAX: 361-777-2347

**(REQUESTS RECEIVED AFTER 3:00 P.M. CENTRAL TIME WILL BE DEEMED AS RECEIVED THE FOLLOWING BUSINESS DAY. ALSO, UP RESERVES THE RIGHT TO REQUEST ANY ADDITIONAL INFORMATION NECESSARY TO CLARIFY THE CUSTOMER REQUEST.)**

 -----  
**THIS SECTION FOR CARRIER USE ONLY**

Initial Receipt Date and Time:

Disposition Date:

Action Taken:

 Issued: January 25, 2006  
 Effective March 1, 2006

UP 6007-B

 Page: 1 of 1  
 Item: 701  
 Concluded on this page



UP 6007-B

Item: 701  
FORMAL RATE INFORMATION REQUEST FORM

**FORMAL RATE INFORMATION REQUEST FORM**

**UNION PACIFIC RAILROAD**  
**Sec. 11101 Formal Rate Information Request**  
(Check one): New  Existing

SEND: FAX # 402-501-0162  
UP - Pricing Services  
1400 Douglas Street, STOP 1340  
Omaha, NE 68179-1340

COMMODITY DESCRIPTION: Bulk Crushed Quicklime

STCC(minimum 3 digits): 3274110

ORIGIN STATION: Dittlinger, TX (LHoist Quarry)  
Serving carrier(s), if known: Union Pacific Railroad Company

DESTINATION STATION: Gregory, TX (Sherwin Alumina Plant)  
Serving carrier(s) if known: Union Pacific Railroad Company

EQUIPMENT TYPE(S): Covered Hoppers

Name: Kent A. Britton, Chief Financial Officer  
Mailing Address: P.O. Box 9911, Corpus Christi, TX 78469  
Telephone: 361-777-2442  
FAX: 361-777-2347

(REQUESTS RECEIVED AFTER 3:00 P.M. CENTRAL TIME WILL BE DEEMED AS RECEIVED THE FOLLOWING BUSINESS DAY. ALSO, UP RESERVES THE RIGHT TO REQUEST ANY ADDITIONAL INFORMATION NECESSARY TO CLARIFY THE CUSTOMER REQUEST.)

**THIS SECTION FOR CARRIER USE ONLY**

Initial Receipt Date and Time:

Disposition Date:

Action Taken:

Issued: January 25, 2006  
Effective: March 1, 2006

UP 6007-B

Page: 1 of 1  
Item: 701  
Concluded on this page

**From:** Brad A. Thrasher [mailto:BRADTHRASHER@UP.COM]  
**Sent:** January 02, 2015 1:48 AM  
**To:** Gleditsch, George  
**Cc:** Daniel M. Jaffe (dmj@sloverandloftus.com); Britton, Kent  
**Subject:** Re: Common Carrier Rate Request for Lime

George, sorry have been out on vacation over the holidays and am just getting caught up on email. You should be able to find rates via our online rate tool as we strive to have comprehensive coverage for our commodities. Believe they are in our UP 3200 tariff. Here's a link--  
> [http://www.uprr.com/customers/price\\_inquiry.shtml](http://www.uprr.com/customers/price_inquiry.shtml)

Happy New Year.

Brad

---

From: "Gleditsch, George" <ggleditsch@SherwinAlumina.com>  
To: "Brad A. Thrasher" <BRADTHRASHER@UP.COM>  
Cc: "Britton, Kent" <kabritton@SherwinAlumina.com>, "Daniel M. Jaffe (dmj@sloverandloftus.com)" <dmj@sloverandloftus.com>  
Date: 12/24/2014 03:16 PM  
Subject: Common Carrier Rate Request for Lime

---

Mr. Thrasher,

On behalf of Mr. Kent Britton, CFO for Sherwin Alumina Company, I am forwarding a letter and two UP 6007 Common Carrier Rate Request Forms (one for McNeil, Tx the other for Dittlinger, Tx.)

I have faxed the UP 6007 forms to UP as well.

Hard copies were sent via Fedex today as well

If you have any questions regarding this request please call either Mr. Kent Britton at 361-777-2442, or myself at the numbers shown below

Hope you have a great holiday season

Best regards,

George Gleditsch  
Procurement Manager  
Sherwin Alumina Company LLC  
361-777-2318 Desk  
361-549-3215 Cell

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Waldhelm V. S.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

SHERWIN ALUMINA COMPANY, LLC	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 42143
	)	
UNION PACIFIC RAILROAD COMPANY)	)	
	)	
Respondent.	)	
	)	

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**VERIFIED STATEMENT OF  
SARAH WALDHELM**

My name is Sarah Waldhelm. My address is 4633 Highway 361 Gregory, TX 78359. I am a transportation specialist at Sherwin Alumina Company, LLC (“Sherwin”), where I have been employed for over 18 years. I am responsible for managing the transportation and logistics for rail service to the Sherwin alumina plant, including inbound lime and outbound alumina shipments. I also manage Sherwin’s fleet of approximately 275 rail cars.

I am very familiar with the logistics of rail service at the Sherwin plant and Union Pacific Railroad’s (“UP”) service to and from the plant, including UP’s handling of inbound lime shipments, which are a critical component in the production process at the plant. Simply put, Sherwin relies on UP rail service in order to bring railcars of lime

to the plant and to ship chemical-grade alumina out to its customers across the country. No other railroad can serve the plant.

In a typical inbound shipment, UP moves the cars from its rail yard in Gregory, TX to a siding near the Sherwin plant. The cars that we receive typically are part of a larger local train serving nearby industries, including OxyChem and DuPont. UP's local crew brings Sherwin's cut of cars to the Sherwin plant. The plant is fronted by a four-lane, grade-separated highway, which the rail line crosses. UP owns a portion of the line that enters the Sherwin property, but the rest of the intra-track plant is owned by Sherwin.

As the cars enter the plant, UP typically spots them in an area we call San Pat, which is outside the main plant production area. Sherwin then coordinates with UP to pull loaded outbound and empty cars out beyond the Sherwin property line and on to the Gregory Yard for forwarding to their final destinations.

#### **I. Historical Shipping Patterns**

As Mr. Gleditsch explains, in his accompanying statement, Sherwin uses approximately 300 tons of lime per day. Prior to the work stoppage, rail shipments of lime generally tracked that usage, but varied based on UP's handling of the cars. Thus, in a typical day, Sherwin would receive two (2) to 20 rail cars of lime, and on average, we received 18-28 railcars per week with each railcar carrying approximately 100 tons of lime. Rail cars were delivered Monday through Friday. A similar pattern occurred for outbound loaded alumina cars and empty cars returning to Sherwin's lime suppliers.

Inbound lime shipments typically loaded at daily rate of 1 or 2 cars per day at the facilities of Sherwin's lime suppliers, Lhoist and Austin White Lime. UP would then move those cars to San Antonio, and then would move blocks of those cars two times per week (Sunday and Thursday) from San Antonio to Gregory, TX. The cars were then moved to the Sherwin plant within a day or two. Typically we would unload UP-provided cars within two (2) days. Sherwin-provided cars were often unloaded in a similar time frame and returned to our lime suppliers.

We had daily communications with UP about the movement of cars into and out of the facility. We would provide UP a detailed ship list every day, and we tracked our inbound shipments using UP's website. I regularly communicated with Robert Johnson, a local terminal manager for UP in the Gregory, Texas area, and with Mary Brannen (a UP manager for yard operations). In addition, Hector De La Garza of Sherwin would arrange the details of car placement and timing with UP's local crews.

## **II. Post-Work Stoppage Changes in Service**

The work stoppage occurred on October 11, 2014, after which UP provided limited, twice-weekly service to the plant until November 6, 2014. The twice-weekly rail service was acceptable for a short period, but it was not as efficient a form of service as Sherwin requires on regular basis. Indeed, UP and Sherwin struggled during this time to queue up sufficient outbound and inbound cars, given the practical limitations of handling 50-60 cars in one day at the Sherwin plant. Thus, a restoration of service would need to be consistent with UP's historical pattern.

### **III. Lime Shipment Requests**

At the request of Mr. Gleditsch, I recently arranged for two railcars (SHAX 2052 and SHAX 2025) to be retrieved from off-site storage and put into lime service. Specifically, Sherwin wanted to restart UP service by requesting the loading and delivery of one lime car from each of Sherwin's lime suppliers. Thus, on January 20, 2015, I billed a railcar of lime through UP's website from Lhoist. I billed a second railcar of lime through UP's website from Austin White Lime on January 30, 2015. In each case, UP loaded the cars and moved them to Gregory, TX.

For car SHAX 2052 from Austin White Lime, I requested that the car be placed at the Sherwin plant on February 10, 2015.<sup>1</sup> My request was directed to the local yard manager, customer service and our account representative. On February 10 and 11, 2015, UP refused to deliver the SHAX 2052 to the plant citing Sherwin's ongoing labor dispute.<sup>2</sup>

For car SHAX 2025, from LHoist, Cindy Jette, my colleague at Sherwin made the request for delivery. She addresses her efforts to have the car placed and UP's response thereto in her verified statement.

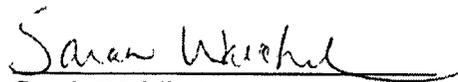
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<sup>1</sup> The relevant correspondence is attached hereto as Attachment A.

<sup>2</sup> UP's response is attached hereto as Attachment B.

**VERIFICATION**

I, Sarah Waldhelm, verify under penalty of perjury that I have read the foregoing Verified Statement and know the contents thereof; and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.

  
Sarah Waldhelm

Executed on: March 10, 2015

**From:** Waldhelm, Sarah [<mailto:mswaldhe@SherwinAlumina.com>]  
**Sent:** Tuesday, February 10, 2015 8:50 AM  
**To:** Robert Johnson; Mary Brannen ([mfbranne@up.com](mailto:mfbranne@up.com))  
**Cc:** Waldhelm, Sarah  
**Subject:** SHAX 2052

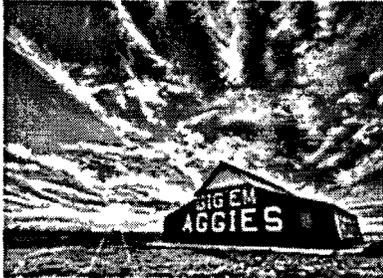
Robert, Mary,

Please spot SHAX 2052 at Sherwin. This is a loaded lime car.

Thanks,  
Sarah

*Sarah Waldhelm*

Transportation  
Sherwin Alumina Company  
PO Box 9911  
Corpus Christi, TX 78469  
4633 Highway 361  
Gregory, TX 78359  
Phone: 361-777-2264  
Fax: 361-777-2684  
Email: [mswaldhelm@sherwinalumina.com](mailto:mswaldhelm@sherwinalumina.com)



From: "Waldhelm, Sarah" <[mswaldhe@SherwinAlumina.com](mailto:mswaldhe@SherwinAlumina.com)>  
To: "Lakeisha Gatson-Dunham ([LSGATSON@up.com](mailto:LSGATSON@up.com))" <[LSGATSON@up.com](mailto:LSGATSON@up.com)>, "[jackanelson@up.com](mailto:jackanelson@up.com)" <[jackanelson@up.com](mailto:jackanelson@up.com)>  
Cc: "Waldhelm, Sarah" <[mswaldhe@SherwinAlumina.com](mailto:mswaldhe@SherwinAlumina.com)>  
Date: 02/10/2015 07:50 AM  
Subject: Spot Car

---

Jack, LaKeisha,

Please have UP spot SHAX 2052 at Sherwin Alumina.

Thanks,  
Sarah

*Sarah Waldhelm*

Transportation  
Sherwin Alumina Company  
PO Box 9911  
Corpus Christi, TX 78469  
4633 Highway 361  
Gregory, TX 78359  
Phone: 361-777-2264  
Fax: 361-777-2684



\*\*

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contact the sender immediately, delete the e-mail and destroy all copies.

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**From:** Jack A. Nelson [mailto:[JACKANELSON@UP.COM](mailto:JACKANELSON@UP.COM)]  
**Sent:** Tuesday, February 10, 2015 8:57 AM  
**To:** Waldhelm, Sarah  
**Cc:** Lakeisha Gatson-Dunham ([LSGATSON@up.com](mailto:LSGATSON@up.com))  
**Subject:** Re: Spot Car - Sherwin Alumina

Sarah,

Unless the labor dispute has been resolved, Union Pacific will not be in a position to spot the car at Gregory.

Please let me know if the situation has changed.

Thanks,

Jack

---

Jack Nelson  
Business Director Sales  
Union Pacific Railroad  
phone: 402-233-3525; cell: 630-842-7485  
[jackanelson@up.com](mailto:jackanelson@up.com)

---

"Waldhelm, Sarah" ---02/10/2015 07:50:45 AM---Jack, LaKeisha, Please have UP spot SHAX 2052 at Sherwin Alumina.

From: "Waldhelm, Sarah" <[mswaldhe@SherwinAlumina.com](mailto:mswaldhe@SherwinAlumina.com)>  
To: "Lakeisha Gatson-Dunham ([LSGATSON@up.com](mailto:LSGATSON@up.com))" <[LSGATSON@up.com](mailto:LSGATSON@up.com)>, "jackanelson@up.com" <[jackanelson@up.com](mailto:jackanelson@up.com)>  
Cc: "Waldhelm, Sarah" <[mswaldhe@SherwinAlumina.com](mailto:mswaldhe@SherwinAlumina.com)>  
Date: 02/10/2015 07:50 AM  
Subject: Spot Car

---

Jack, LaKeisha,

Please have UP spot SHAX 2052 at Sherwin Alumina.

Thanks,  
Sarah

*Sarah Waldhelm*  
Transportation

Sherwin Alumina Company  
PO Box 9911  
Corpus Christi, TX 78469  
4633 Highway 361  
Gregory, TX 78359  
Phone: 361-777-2264  
Fax: 361-777-2684



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\*\*

Jette V. S.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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SHERWIN ALUMINA COMPANY, LLC	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 42143
	)	
UNION PACIFIC RAILROAD COMPANY)	)	
	)	
Respondent.	)	
	)	

---

**VERIFIED STATEMENT OF  
CINDY JETTE**

My name is Cindy Jette. My address is 4633 Highway 361 Gregory, TX 78359. I am a Transportation Specialist at Sherwin Alumina Company, LLC ("Sherwin") where I have been employed for approximately 20 years. In this capacity, I am responsible for managing the transportation aspects of logistics via vessels, including the vessels coming in and out of Sherwin. One of my primary duties is managing the large volume of smelter-grade alumina that is shipped by barge from the plant. However, I also assist in rail shipping matters when my colleague Sarah Waldhelm is unavailable.

On January 27, 2015, I requested that UP place loaded lime car SHAX 2025 at our facility. I called Robert Johnson, a local terminal manager in the Gregory, Texas area, and left a voicemail message requesting that UP deliver the car. Around this

time, I tried spotting the car on the UP website but the website rejected my request. I also emailed UP customer service representatives and was told that until the labor dispute ends, UP would not spot the cars.<sup>1</sup> Later, Robert Johnson returned my phone call and confirmed that because Sherwin was still in a labor dispute, UP would not place SHAX 2025. Mr. Johnson also sent me an email reiterating our phone call.<sup>2</sup>

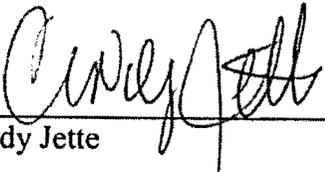
---

<sup>1</sup> The email is attached hereto as Attachment A.

<sup>2</sup> The email is attached hereto as Attachment B.

**VERIFICATION**

I, Cindy Jette, verify under penalty of perjury that I have read the foregoing  
Verified Statement and know the contents thereof; and that the same are true and correct.  
Further, I certify that I am qualified and authorized to file this statement.

  
Cindy Jette

Executed on: March 10, 2015

**From:** Jack A. Nelson [<mailto:JACKANELSON@UP.COM>]  
**Sent:** Tuesday, January 27, 2015 2:25 PM  
**To:** Jette, Cindy  
**Cc:** Gleditsch, George; 'Lsgatson@up.com'; Waldhelm, Sarah; Mary F. Brannen; Robert M. Johnson  
**Subject:** Re: Request for delivery of rail car SHAX 2025

Cindy,

I'm not sure I understand. At this time, UP is not servicing the Gregory facility due to the strike. Has that been resolved, or do you have an update?

Jack

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Jack Nelson  
Business Director Sales  
Union Pacific Railroad  
phone: 402-233-3525; cell: 630-842-7485  
[jacknelson@up.com](mailto:jacknelson@up.com)

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"Jette, Cindy" ---01/27/2015 08:47:40 AM---Jack I have requested at our local yard manger -( Robert Johnson and Mary Brannen) to deliver lime c

From "Jette, Cindy" <[cniette@SherwinAlumina.com](mailto:cniette@SherwinAlumina.com)>  
To: "jacknelson@up.com" <[jacknelson@up.com](mailto:jacknelson@up.com)>, "Lsgatson@up.com" <[Lsgatson@up.com](mailto:Lsgatson@up.com)>  
Cc: "Waldhelm, Sarah" <[mswaldhe@SherwinAlumina.com](mailto:mswaldhe@SherwinAlumina.com)>, "Gleditsch, George" <[ggleditsch@SherwinAlumina.com](mailto:ggleditsch@SherwinAlumina.com)>, "Jette, Cindy" <[cniette@SherwinAlumina.com](mailto:cniette@SherwinAlumina.com)>  
Date: 01/27/2015 08:47 AM  
Subject: Request for delivery of rail car SHAX 2025

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Jack

I have requested at our local yard manger -( Robert Johnson and Mary Brannen) to deliver lime car SHAX 2025 to Sherwin.

Thanks  
Cindy

Cindy Jette  
Sherwin Alumina Company  
361 777 2661

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**From:** Robert M. Johnson [<mailto:RMJOHNSO@up.com>]  
**Sent:** Tuesday, January 27, 2015 10:03 AM  
**To:** Jette, Cindy  
**Cc:** Gleditsch, George; 'mfbranne@up.com'; Waldhelm, Sarah  
**Subject:** Re: Delivery of lime car SHAX 2025

We can not deliver cars to Sherwin until the lock out is over.  
May want to divert the car back to the shipper or the shipper may  
want to ship it to a different customer. We will hold it in the yard  
until the car is diverted somewhere else.

Robert M. Johnson  
Manager Train Operations  
Corpus Christi, Texas  
Office 402-501-4644  
Cell 361-633-9300  
Fax 361-883-9692

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From: "Jette, Cindy" <[cnjette@SherwinAlumina.com](mailto:cnjette@SherwinAlumina.com)>  
To: "'RMJohnso@up.com'" <[RMJohnso@up.com](mailto:RMJohnso@up.com)>, "mfbranne@up.com" <[mfbranne@up.com](mailto:mfbranne@up.com)>  
Cc: "Waldhelm, Sarah" <[mswaldhe@SherwinAlumina.com](mailto:mswaldhe@SherwinAlumina.com)>, "Gleditsch, George" <[ggleditsch@SherwinAlumina.com](mailto:ggleditsch@SherwinAlumina.com)>, "Jette, Cindy" <[cnjette@SherwinAlumina.com](mailto:cnjette@SherwinAlumina.com)>  
Date: 01/27/2015 07:49 AM  
Subject: Delivery of lime car SHAX 2025

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Robert or Mary  
Please deliver the lime rail car SHAX 2025 to Sherwin Alumina.

Thanks  
Cindy

Cindy Jette  
Sherwin Alumina Company  
361 777 2661

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