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July 27, 2011

**BY E-FILING**

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423

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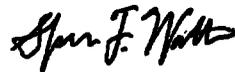
Re: Docket No. 42119, North American Freight Car  
Association v. Union Pacific Railroad Company

Dear Ms. Brown:

Attached for e-filing in the above referenced docket is Union Pacific's  
Answer to the First Amended Formal Complaint of North American Freight Car  
Association.

Thank you for your attention to this matter.

Sincerely,



Spencer F. Walters

cc: Andrew P. Goldstein, Esq.  
John M. Cutler, Jr., Esq.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**NORTH AMERICAN FREIGHT CAR  
ASSOCIATION,**

**Complainant,**

**v.**

**UNION PACIFIC RAILROAD COMPANY,**

**Defendant.**

**Docket No. 42119**

**ANSWER OF UNION PACIFIC RAILROAD COMPANY**

Union Pacific Railroad Company ("UP") hereby answers the First Amended Formal Complaint ("Complaint") of North American Freight Car Association ("NAFCA"), filed on July 7, 2011. To the extent that UP does not specifically admit an allegation in the Complaint, that allegation is denied. UP responds to the allegations in each separately numbered paragraph of the Complaint as follows:

1. UP lacks knowledge or information sufficient to form a belief as to the truth of the allegation in the first sentence of Paragraph 1. UP admits that freight cars manufactured or leased by NAFCA members, and private and railroad-owned freight cars used by NAFCA members, move over UP lines from time to time, and that some of those movements are subject to Item 200-B of UP Freight Tariff 6004 Series ("Item 200-B"). By way of further response, UP states that Item 200-B is intended to promote safe and efficient rail transportation and to reduce risks to public health and safety by encouraging parties responsible for loading and unloading railcars to clean any commodity residue resulting from the loading or unloading process from railcar wheels, brakes, and all safety appliances on the railcars, and to secure and seal all valves and discharge ports to prevent commodity leakage during rail movement.

2. UP admits that it is a common carrier by rail subject to the jurisdiction of the Surface Transportation Board.

3. UP admits the allegations in the first sentence of Paragraph 3. The remainder of Paragraph 3 consists of arguments and conclusions regarding interpretation and application of Item 200-A to which no response is required.

4. UP admits that NAFCA filed a complaint on April 15, 2010, challenging certain provisions in Item 200-A. The remainder of Paragraph 4 consists of NAFCA's characterization of the allegations in NAFCA's April 15, 2010, complaint to which no response is required.

5. UP admits the allegations in Paragraph 5. UP avers by way of further response that Item 200-B does reflect changes to Item 200-A that resulted from negotiations with NAFCA, but UP admits that Item 200-B does not represent any agreement between the parties.

6. UP admits that Appendix A to the Complaint is an accurate copy of Item 200-B. UP also admits that Appendix B to the complaint is an accurate copy of 49 C.F.R. Part 215. The remainder of Paragraph 6 consists of legal arguments and conclusions regarding interpretation and application of Item 200-A, Item 200-B, and federal regulations to which no response is required.

7. UP denies that the language quoted in Paragraph 7 is an accurate quotation from Item 200-B. UP admits that Item 200-B addresses the assessment of surcharges as published in UP Tariff-6004 series that may apply when UP rejects a car as unsafe for movement because of the presence of lading residue on a railcar's exterior or because valves or discharge ports have not been properly secured. By way of further response, UP states that it has not assessed the surcharge provided for in Item 200-B (or the surcharge that was previously provided for in Item 200-A) against any customer because its customers have generally accepted responsibility for

removing lading residue from the exterior of railcars and securing valves and discharge ports before tendering cars to UP, although UP has on occasion incurred handling costs associated with removing cars with lading residue on the exterior from trains.

8. UP admits that the language quoted in Paragraph 8 is an accurate quotation from Item 200-B.

9. UP admits that the language quoted in Paragraph 9 is an accurate quotation from Item 200-B.

10. UP denies that the language quoted in Paragraph 10 is an accurate quotation from Item 200-B.

11. The first sentence of Paragraph 11 states a legal conclusion to which no response is required. UP denies the allegations in the second sentence of Paragraph 11. By way of further response, UP states that Item 200-B is designed to promote safe and efficient rail transportation and to reduce risks to public health and safety. UP also states by way of further response that NAFCA's Complaint appears to represent an effort by certain parties to avoid accepting responsibility for unsafe conditions they create when they load or unload railcars.

12. The first two sentences of Paragraph 12, as well as footnote 1, state legal conclusions to which no response is required. By way of further response, UP states that consignors and consignees are responsible for loading and unloading railcars in a manner consistent with safe rail movement and that a car owner or lessee is responsible for the cleanliness of its private equipment. The remainder of Paragraph 12 consists of legal arguments and conclusions regarding interpretation and application of Item 200-B and federal regulations to which no response is required. By way of further response, UP states that Item 200-B in no way seeks to relieve UP of its obligations under federal regulations and that Item 200-B is designed to

promote safe and efficient rail transportation and reduce risks to public health and safety. UP further states that the vast majority of shippers accept their responsibility for removing lading residue from the exterior of railcars, but that Item 200-B allows UP to encourage safe behavior where shippers or consignees fail to tender cars safe for movement.

13. UP admits that the quotation from Appendix D of 40 C.F.R. Part 215 in Paragraph 13 is accurate, and states that the regulation speaks for itself. The remainder of Paragraph 13 consists of legal arguments and conclusions regarding interpretation and application of Item 200-B and federal regulations to which no response is required. By way of further response, UP states that Item 200-B in no way seeks to relieve UP of its obligations under federal regulations and that Item 200-B is designed to promote safe and efficient rail transportation and reduce risks to public health and safety.

14. Paragraph 14 consists of legal arguments and conclusions regarding interpretation and application of Item 200-B and federal regulations to which no response is required. By way of further response, UP states that Item 200-B in no way seeks to relieve UP of its obligations under federal regulations and that Item 200-B is designed to promote safe and efficient rail transportation and reduce risks to public health and safety.

15. UP denies the allegations in the first and last sentences of Paragraph 15. The remainder of Paragraph 15 consists of legal arguments and conclusions regarding interpretation and application of Item 200-B, federal regulations, and other law to which no response is required. By way of further response, UP states that Item 200-B in no way seeks to relieve UP of its obligations under federal regulations and that Item 200-B is designed to promote safe and efficient rail transportation and reduce risks to public health and safety.

16. Paragraph 16 consists of legal arguments and conclusions regarding interpretation and application of Item 200-B, federal regulations, and other law to which no response is required. By way of further response, UP states that Item 200-B in no way seeks to relieve UP of its obligations under federal regulations and that Item 200-B is designed to promote safe and efficient rail transportation and reduce risks to public health and safety.

17. The allegations in the three paragraphs in Part IV of the Complaint consist of legal arguments and conclusions regarding interpretation of Item 200-B and other law to which no response is required.

#### **DEFENSES**

1. The Complaint fails to state a claim for failure to establish reasonable practices under 49 U.S.C. § 10702.

2. The Complaint fails to state a claim that Item 200-B constitutes an unreasonable practice in violation of 49 U.S.C. § 11702.

3. The Complaint fails to state a claim for failure to furnish safe and adequate car service or to establish, observe, and enforce reasonable rules and practices on car service under 49 U.S.C. § 11121.

4. The Complaint fails to state a claim that UP has violated any duty to furnish safe and clean cars under 49 U.S.C. § 11101 or 49 U.S.C. § 11121.

WHEREFORE, UP requests that the Complaint be dismissed with prejudice; that NAFCA's request that the Board enter an order requiring UP to cease and desist from publishing Item 200-B, or any Item with similar provisions, be denied; that no relief of any kind be awarded to NAFCA; that UP be awarded its costs; and that the Board grant UP such other and further relief as may be appropriate.

Respectfully submitted,



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*Attorneys for Union Pacific Railroad Company*

July 27, 2011

**CERTIFICATE OF SERVICE**

I, Spencer F. Walters, certify that on this 27th day of July, 2011, I caused a copy of Union Pacific Railroad Company's Answer to the Complaint of North American Freight Car Association to be served by e-mail and first-class mail, postage pre-paid, on:

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Spencer F. Walters