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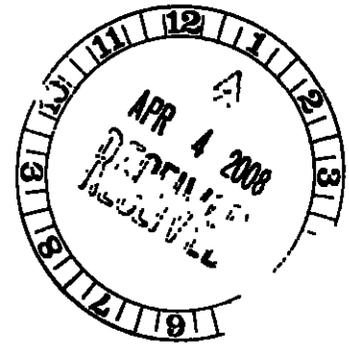
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April 4, 2008



BY HAND

Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-00001

Re: Docket No. 42105, Dairyland Power Cooperative v Union Pacific Railroad Company

Dear Secretary Quinlan:

Enclosed for filing is an original and ten copies of Union Pacific's Motion For A Protective Order.

An additional paper copy of this filing is also enclosed. Please return a date-stamped copy to our messenger.

Thank you for your attention to this matter.

Sincerely,

Michael L. Rosenthal

Enclosure

cc: Counsel for Dairyland

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Office of Proceedings
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Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD



DAIRYLAND POWER COOPERATIVE,

Complainant,

v.

UNION PACIFIC RAILROAD COMPANY,

Defendant.

Docket No. 42105

UNION PACIFIC'S MOTION FOR A PROTECTIVE ORDER

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Attorneys for Union Pacific Railroad Company

April 4, 2008

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

| | | |
|---------------------------------|---|------------------|
| DAIRYLAND POWER COOPERATIVE, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | Docket No. 42105 |
| |) | |
| UNION PACIFIC RAILROAD COMPANY, |) | |
| |) | |
| Defendant. |) | |

UNION PACIFIC’S MOTION FOR A PROTECTIVE ORDER

On March 31, 2007, Union Pacific Railroad Company (“UP”) filed a motion to dismiss the Complaint filed in this matter by Dairyland Power Cooperative (“Dairyland”). Three days later, and nearly one month after filing the Complaint, Dairyland served UP with a series of interrogatories and document requests. Pursuant to 49 C.F.R. § 1114.21(c), UP asks the Board to quash Dairyland’s discovery requests and stay all further discovery pending the Board’s decision on the motion to dismiss. Dairyland’s discovery requests are attached to this motion as Exhibit 1.¹

Dairyland’s Complaint invokes the Board’s unreasonable practice jurisdiction to challenge the level of fuel surcharge payments collected by UP from Dairyland. Specifically, Dairyland complains that the “payments exceed the incremental fuel cost increases UP has actually incurred in handling Dairyland’s traffic since January 1, 2006.” Compl. ¶ 9.

¹ Counsel for UP conferred with counsel for Dairyland in an attempt to obtain Dairyland’s agreement to postpone discovery until the Board decides UP’s motion to dismiss, but Dairyland refused to agree.

UP believes that Dairyland's claims are precluded as a matter of law. As UP discussed in its motion to dismiss, Board precedent establishes that Dairyland's Complaint must be dismissed because a shipper seeking to challenge the level of a rail carrier's surcharges must invoke the agency's jurisdiction over unreasonable rates, not unreasonable practices. Even if Dairyland's claims could somehow be interpreted as not challenging UP's fuel surcharge levels, they would nonetheless be precluded by the Board's decision in *Rail Fuel Surcharges*, STB Ex Parte No. 661 (STB served Jan. 26, 2007).

Moreover, Dairyland's discovery requests are far-reaching and burdensome, and addressing them would be an expensive and time-consuming undertaking for UP, particularly in light of the pending motion to dismiss. For example:

Dairyland does not limit its requests to documents and information regarding fuel surcharges. Instead, Dairyland seeks all documents related to the rate, volume, and service terms and other terms and commitments under which Dairyland traffic moves pursuant to Circular 111.

- Dairyland's very first document request seeks "all documents related to UP's development of the terms set forth in Item 6630-E of UP Circular 111." Ex. 1, Request for Production ("RFP") No. 1. (Item 6630-E contains all of the rate, volume, service, and other terms and conditions that apply to Dairyland's movements under UP Circular 111. *See* Complaint, Ex. A, pp. 2-3.)
- Dairyland requests "all documents relating to UP's communications with Dairyland in 2004 and 2005 concerning UP's provision of service to Dairyland on and after January 1, 2006." Ex. 1, RFP No. 2.

- Dairyland requests “all documents comprised of, or relating to, cost analyses, contribution analyses, or other analyses relating to the rates and other terms set forth in Item 6630-E of UP Circular 111.” Ex. 1, RFP No. 3.

Dairyland does not limit its requests that relate to UP’s fuel surcharge to documents and information regarding its claim in the Complaint – *i e* , that its “payments exceed the incremental fuel cost increases UP has actually incurred in handling Dairyland’s traffic.” Complaint ¶ 9. Instead, Dairyland seeks all documents related to UP’s coal fuel surcharge program.

- Dairyland requests “all documents relating to the development of the fuel surcharge mechanisms set forth in (a) Item 690 of UP Circular 6603 and (b) Item 694 of UP Circular 6603.” Ex. 1, RFP No. 4.
- Dairyland requests “all documents containing cost analyses, contribution analyses, or other analyses relating to the fuel surcharge mechanisms set forth in (a) Item 690 of UP Circular 6603 and (b) Item 694 of UP Circular 6603.” Ex. 1, RFP No. 5.

When Dairyland does ask about its own traffic, its requests are plainly designed to elicit the type of information that would be relevant only in a rate case, not an unreasonable practice case, and then only in a rate case challenging the fuel component of its overall line-haul rate, which would not be permitted under agency precedent. Moreover, Dairyland’s requests, which seek data tracking its fuel back to the refinery from which the fuel was obtained, would be overly broad and unduly burdensome even in the context of a rate case.

- Dairyland requests documents regarding “each Dairyland train movement for each year or partial year from January 1, 2006 to the present” that show “(a) each crew district through which Dairyland trains pass identified by “from” and “to” stations;

(b) the route miles in each crew district; (c) the route(s) used; (d) the loaded train miles over the route(s); (e) the empty train miles over the routes; (f) the number of diesel units per train by unit of measure of rail line (*e g*, crew district or line segment) for the loaded route(s); (g) the number of diesel units per train by unit of measure of rail line for the empty route(s); (h) the number of cars per train by the unit of measure of rail line for the loaded route(s); (i) the number of cars per train by the unit of measure of rail line for the empty route(s); (j) the trailing weight of each train (cars and contents) by unit of measure of rail line for the empty route(s); (k) the average net load (tons per car) of each car; and (l) the tare weight of each car.” Ex. 1, RFP No. 11.

- Dairyland requests documents regarding “the following information for each locomotive used by UP in Dairyland service from January 1, 2006 to the present: (a) locomotive initial number; (b) model of type (*e g* SD70-MAC); (c) horsepower; (d) capacity of its fuel tanks (gallons); (e) weight; and (f) the diesel unit-miles traveled each year or partial year from 2006 to the present.” Ex 1, RFP No. 13
- Dairyland requests documents regarding “(a) the location(s) where locomotives handling Dairyland trains are fueled; (b) the actual amount of fuel consumed by the locomotives used by UP in Dairyland service, either by individual locomotive, or collectively, for the most recent 12 months or calendar year; (c) the total number of diesel unit miles generated by the locomotives for which fuel consumption data was provided in response to (b) above during the same period used in response to (b) above; (d) the method by which UP accounts for or records fuel usage for the locomotives used for the Dairyland trains; and (e) computer-readable versions (both

compiled and non-complied), including supporting databases and necessary documentation, of any and all computer programs in UP's possession used to measure or estimate the fuel usage of locomotives moving Dairyland trains." Ex. 1, RFP No. 14.

- Dairyland asks UP to identify "all locations in the States of Wyoming, Nebraska, Kansas, Missouri and Illinois where UP has performed fueling of locomotives used in Dairyland service from January 1, 2006 to present" and to produce documents that show, "at each such location: (a) the source of the fuel, including the name and location of the vendor(s) who provide the fuel to UP and the refinery(ies) or other location from which the fuel is obtained, and (b) the method and cost of transporting and dispensing the fuel from the refinery(ies) or other locations from which the fuel is obtained to the location where the fueling of locomotives is performed." Ex. 1, RFP No. 15.
- Dairyland requests "all documents that summarize and quantify the fuel portion of variable costs of providing service to Dairyland under Item 6630-E of UP Circular 111." Ex. 1, RFP No. 18.

Dairyland also appears to be planning a campaign to depose UP personnel with regard to all of the provisions in Item 6630-E of UP Circular 111

- Dairyland asks UP to "[i]dentify the person(s) at UP who participated in the development of the terms set forth in Item 6630-E of UP Circular 111." Ex. 1, Interrogatory No. 1.

- Dairyland asks UP to “[i]dentify the person(s) at UP who prepared any cost analyses, contribution analyses, or other analyses relating to rates, fuel surcharges, or other terms set forth in Item 6630-E of UP Circular 111 ” Ex. 1, Interrogatory No. 2.

If the Board dismisses the Complaint, Dairyland’s discovery requests become moot. Even if the Board does not dismiss the case, its decision might narrow the issues and thus substantially lessen the need for discovery. Moreover, if UP were required to proceed with discovery now, it would object on relevancy, burden, and other grounds to Dairyland’s requests, and the parties would be forced to devote substantial resources to litigating discovery disputes. UP submits that it would be substantially more efficient to stay discovery until the Board has the opportunity to rule on the motion to dismiss.

The Board and the Interstate Commerce Commission (“ICC”) have stayed discovery in similar circumstances. In *Zoneskip, Inc v United Parcel Service of America, Inc* , ICC Docket No. 40519 (ICC served May 28, 1991), the ICC stayed discovery because UPS’s motion to dismiss raised “significant concerns about both the substantive and procedural soundness of the complaint and questions about the potential scope of this case ” *Id.* at 2. The agency explained that its “action on the pending UPS motion to dismiss, regardless of [its] ultimate resolution of the matter, may determine the appropriate scope of discovery, if any.” *Id.* Similarly, in *DXH, Inc v. Matson Navigation Co* , STB Docket No. WCC-105 (STB served June 6, 2002), the Board suspended the procedural schedule in order to consider a pending motion to dismiss, “[g]iven that a decision on the motion to dismiss may affect the scope of discovery ” *Id.* at 2; *see also, e.g., Paducah & Louisville Ry – Control Exemption – Paducah & Illinois R R* , STB Fin. Docket No. 33362 (STB served July 9, 1999), at 1-2 (“[A]ll procedural matters in this proceeding were held in abeyance pending our decision whether to institute the requested show-

cause proceeding. Both discovery and rebuttal statements become relevant only if we agree to institute the requested proceeding . . .”). In other cases, the parties have agreed on their own to postpone discovery while the Board considers a motion to dismiss. *See, e.g., Town of Woodbridge, NJ v. Consolidated Rail Corp*, STB Docket No. 42053 (STB served Mar. 23, 2001), at 3 n.2 (noting that the parties “had agreed to postpone discovery in this proceeding . . . until after [the Board] had ruled on Conrail’s motion to dismiss”).

UP’s motion to dismiss raises significant questions about the substantive soundness of Dairyland’s Complaint that the Board can resolve as a matter of law. At the same time, Dairyland is insisting that UP respond to discovery requests that will be expensive and time-consuming to address. Under the circumstances, the Board should quash Dairyland’s discovery requests and stay all further discovery until it decides UP’s motion to dismiss.

Respectfully submitted,



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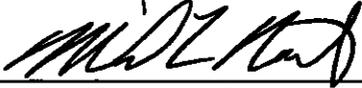
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Facsimile: (402) 501-0129

Attorneys for Union Pacific Railroad Company

April 4, 2008

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that on this 4th day of April, 2008, I caused a copy of Union Pacific's Motion for a Protective Order to be served on counsel for Dairyland by email and first class mail.



Michael L. Rosenthal

EXHIBIT 1

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

| | | |
|--------------------------------|---|------------------|
| DAIRYLAND POWER COOPERATIVE |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | Docket No. 42105 |
| |) | |
| UNION PACIFIC RAILROAD COMPANY |) | |
| |) | |
| Defendant. |) | |

**COMPLAINANT'S INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

Pursuant to 49 C.F.R. §§ 1114.26 and 1114.30, Complainant Dairyland Power Cooperative ("Dairyland"), submits the following Interrogatories and Requests for Production of Documents to Defendant Union Pacific Railroad Company ("UP").

Dairyland requests that UP's written objections, and UP's written responses to Interrogatories, be served by April 18, 2008. Dairyland also requests that copies of all responsive documents be produced and delivered to the offices of Slover & Loftus, 1224 Seventeenth Street, N.W., Washington, D.C. 20036 on a rolling basis, with full production to be completed by May 5, 2008. Dairyland is prepared to cooperate with UP to facilitate the expeditious production of documents with the minimum practicable burden.

I.

DEFINITIONS

The following defined terms are used herein:

1. "And," "or," and/or "each" shall be construed in the disjunctive or conjunctive as necessary in order to bring within the scope of each Interrogatory or Request all responsive information or documents which otherwise might be construed as outside the scope of the Interrogatory or Request.
2. "Dairyland" means Dairyland Power Cooperative.
3. "Dairyland route(s)" means the railroad line segments over which UP moves loaded and empty coal trains between Origins and Destinations.
4. "Dairyland service" or "service to Dairyland" means all of the services provided by UP in connection with the transportation of coal in Dairyland trains between Origins and Destinations.
5. "Dairyland train(s)" means the trains containing loaded or empty coal cars moving to and from Destinations over the Dairyland route(s).
6. "Dairyland train movement(s)" means the trains containing loaded or empty coal cars moving to and from Destinations.
7. "Destination(s)" means the Cahokia and Cora terminals (for movement beyond by barge to Dairyland's Alma and Genoa generating stations).

8. **“Document(s)” means all writings or visual displays of any kind, whether generated by hand or mechanical means, including, without limitation, photographs, lists, memoranda, reports, notes, letters, phone logs, e-mails, contracts, drafts, workpapers, computer printouts, computer tapes, telecopies, telegrams, newsletters, notations, books, affidavits, statements (whether or not verified), speeches, summaries, opinions, studies, analyses, evaluations, statistical records, proposals, treatments, outlines, any electronic or mechanical records, data or representations (including physical things such as, but not limited to, computer disks), and all other materials of any tangible medium or expression, in UP’s current or prior possession, custody or control. A draft or non-identical copy is a separate document within the meaning of this term.**

9. **“Identify,” when referring to a document, means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) or recipient(s).**

10. **“Identify,” when referring to information, means to list or produce documents containing the specified information.**

11. **“Origin(s)” means the UP-served coal mines in Campbell and Converse Counties, Wyoming.**

12. "Person" means natural persons, corporations, institutions, partnerships, firms, joint ventures, associations, political subdivisions or other legal entities, as the case may be.

13. "Related," "related to," and "relating to" mean and include making a statement discussing, describing, referring to, reflecting, explaining, analyzing, or in any way pertaining to, in whole or in part, the subject matter of the Interrogatory or Request.

14. "UP" means Union Pacific Railroad Company, its present or former employees, agents, counsel, officers, directors, advisors, consultants, divisions, departments, predecessors, parent and/or holding companies, subsidiaries, or any of them, and all other persons acting (or who have acted) on its behalf.

15. "UP Circular 111" means all issues of the document entitled "UP Circular 111."

16. "UP Circular 6603" means all issues of the document entitled "UP Circular 6603."

II.

INSTRUCTIONS

UP is requested to conform to the following instructions in responding to these Interrogatories and Requests.

1. Each paragraph below shall operate and be construed independently. Unless otherwise indicated, no paragraph limits the scope of any other paragraph.

2. Where these discovery requests seek data in a computer-readable or machine-readable format, for each computer file supplied provide:

- a. The name and description of the source database or other file from which the records in the computer file were selected;**
- b. A description of how the records in the file produced were selected**
- c. The name, title and location of the individual (or contractor) responsible for developing the data responsive to the request; and**
- d. Each computer program (in native software and text file) and intermediate file used in deriving the files produced; and for each field in each computer file provide:**
 - 1) The name of the field;**
 - 2) The starting and ending positions of the field;**
 - 3) A detailed definition of the field;**
 - 4) A detailed description of the data in the field, including an explanation of the purpose for which they are used;**
 - 5) The type of data in the field, i.e., whether numeric, character, alphanumeric, number of digits, number of significant digits, whether signed or unsigned (i.e., negatives allowed);**
 - 6) If the values in a field are terms or abbreviations, a list of all terms or abbreviations used with detailed definitions of each;**
 - 7) An indication of whether the data in the field are packed or compressed; and**
 - 8) If the data in the field are packed or compressed, the type of packing or compression:**
 - a) Zoned with low-order sign;**
 - b) Binary with LSB first;**

- c) Binary with MSB first;
- d) Packed with high-order sign;
- e) Packed with low-order sign;
- f) Packed with no sign; and
- g) Other (specify and provide detailed instructions for unpacking).

3. If an answer or the production of any responsive document is withheld under 49 C.F.R. §1114.26(a) or §1114.30(a)(1) on the basis of a claimed privilege or attorney work product, then for each such answer or document, provide the following information: its date, type (e.g., letter, meeting, notes, memo, etc.), author (note if author is an attorney), addressee(s)/recipient(s) (note if addressee(s) or recipient(s) is an attorney), general subject matter, and basis for withholding the information.

4. If the production of any requested document or answer to any interrogatory is withheld for claimed grounds other than privilege or attorney work product, state with specificity the basis for such withholding.

5. UP is requested to supplement its responses to these Interrogatories and Document Production Requests and produce responsive information or documents obtained or created at any time and is further requested to supplement its responses in the manner provided in 49 C.F.R. § 1114.29.

6. If a responsive document was, but is no longer, in UP's possession, custody or control, describe what disposition was made of it.

7. Please organize the documents produced in such a manner that Dairyland may readily determine which documents are being produced by UP in response to each specific Document Production Request. If no document is produced in response to any specific Request, please so indicate in the response.

8. In the event UP objects to producing any documents on grounds that UP does not maintain the information described in the form or format requested by Dairyland, please produce the documents which contain such information in whatever form or format UP does maintain such information.

9. Dairyland reserves the right to file supplemental and/or follow-up Interrogatories, Document Production Requests, and other discovery, as necessary or appropriate.

III.

INTERROGATORIES

Interrogatory No. 1:

Identify the person(s) at UP who participated in the development of the terms set forth in Item 6630-E of UP Circular 111.

Interrogatory No. 2:

Identify the person(s) at UP who prepared any cost analyses, contribution analyses, or other analyses relating to the rates, fuel surcharges, or other terms set forth in Item 6630-E of UP Circular 111.

Interrogatory No. 3:

Identify the person(s) at UP who participated in the development of the fuel surcharge mechanisms set forth in (a) Item 690 of UP Circular 6603 and (b) Item 694 of UP Circular 6603.

Interrogatory No. 4:

Identify the person(s) at UP who have performed any cost analysis, contribution analysis or other analysis relating to the fuel surcharge mechanisms set forth in (a) Item 690 of UP Circular 6603 and (b) Item 694 of UP Circular 6603.

IV.

DOCUMENT PRODUCTION REQUESTS

Request for Production No. 1:

Produce all documents related to UP's development of the terms set forth in Item 6630-E of UP Circular 111.

Request for Production No. 2:

Produce all documents relating to UP's communications with Dairyland in 2004 and 2005 concerning UP's provision of service to Dairyland on and after January 1, 2006.

Request for Production No. 3:

Produce all documents comprised of, or relating to, cost analyses, contribution analyses, or other analyses relating to the rates and other terms set forth in Item 6630-E of UP Circular 111.

Request for Production No. 4:

Produce all documents relating to the development of the fuel surcharge mechanisms set forth in (a) Item 690 of UP Circular 6603 and (b) Item 694 of UP Circular 6603.

Request for Production No. 5:

Produce all documents containing cost analyses, contribution analyses, or other analyses relating to the fuel surcharge mechanisms set forth in (a) Item 690 of Circular 6603 and (b) Item 694 of UP Circular 6603.

Request for Production No. 6:

Produce all documents containing any analyses showing the (a) fuel costs included in the rates set forth in Item 6630-E of UP Circular 111 and/or (b) the incremental fuel costs UP has incurred between January 1, 2006 to present in providing service to Dairyland under Item 6630-E of UP Circular 111.

Request for Production No. 7:

Produce all documents UP has provided in response to the grand jury subpoena issued to UP by an "Attorney General of a state outside our service territory..."

pertaining to our fuel surcharge program” as described in UP’s Form 10-K Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, for the fiscal year ended Dec. 31, 2007, at 15.

Request for Production No. 8:

Produce all documents supporting the allegation contained in Paragraph 9 of UP’s March 25, 2008 Answer “that beginning April 26, 2007, UP applied a mileage-based fuel surcharge to the line-haul freight charges paid by Dairyland under Item 6630-E, calculated based on the number of miles and number of cars used to handle traffic for Dairyland and the number of cents per mile per car that, if the same surcharge were paid by every one of UP’s PRB coal customers, would allow UP to recover the incremental fuel costs associated with all of its PRB coal traffic,” including, but not limited to documents discussing the methodology used to make the calculations and all source data used to develop the calculations.

Request for Production No. 9:

Produce all documents supporting the statement by UP in the Petition of Union Pacific Railroad Company for a Declaratory Order, STB Finance Docket No. 35021 (filed Apr. 26, 2007) at 5 (“UP Declaratory Order Petition”), that the UP fuel surcharge program implemented in response to the Board’s Ex Parte No. 661 decision is “designed to produce the same level of fuel cost recovery on average as UP’s prior, rate-based programs.”

Request for Production No. 10:

Produce all documents containing studies, and/or other analyses related to UP's assertions in UP's Declaratory Order Petition at 15, that "[s]ome customers may pay more than the actual incremental cost of fuel we use to handle their particular shipments."

Request for Production No. 11:

Produce documents, in a computer-readable format to the extent available, which provide the following information for each Dairyland train movement for each year or partial year from January 1, 2006 to the present: (a) each crew district through which Dairyland trains pass identified by "from" and "to" stations; (b) the route miles in each such crew district; (c) the route(s) used; (d) the loaded train miles over the route(s); (e) the empty train miles over the route(s); (f) the number of diesel units per train by the unit measure of rail line (e.g. crew district or line segment) for the loaded route(s); (g) the number of diesel units per train by the unit measure of rail line for the empty route(s); (h) the number of cars per train by the unit measure of rail line for the loaded route(s); (i) the number of cars per train by the unit measure of rail line for the empty route(s); (j) the trailing weight of each train (cars and contents) by the unit measure of rail line for the empty route(s); (k) the average net load (tons per car) of each car; and (l) the tare weight of each car.

Request for Production No. 12:

Produce all documents which contain actual cycle time data for the Dairyland trains for each year or partial year January 1, 2006 to the present. Data is requested that shows the components of such cycle time in total and in its component pieces, including, but not limited to, transit, loading, staging and unloading times. If such documents do not exist, please provide such documents that do exist, in hard copy and computer-readable format to the extent available, including all necessary documentation, from which the cycle times for the Dairyland trains for each year or partial year January 1, 2006 to the present can be derived.

Request for Production No. 13:

Produce documents, in a computer-readable format to the extent available, which provide the following information for each locomotive used by UP in Dairyland service from January 1 2006 to present: (a) locomotive initial number; (b) model of type (e.g. SD70-MAC); (c) horsepower; (d) capacity of its fuel tanks (gallons); (e) weight; and (f) the diesel unit-miles traveled each year or partial year from 2006 to the present.

Request for Production No. 14:

Produce documents sufficient to show the following: (a) the location(s) where the locomotives handling the Dairyland trains are fueled; (b) the actual amount of fuel consumed by the locomotives used by UP in Dairyland service, either by individual locomotive, or collectively, for the most recent 12 months or calendar year; (c) the total

number of diesel unit miles generated by the locomotives for which fuel consumption data was provided in response to (b) above during the same time period used in response to (b) above; (d) the method by which UP accounts for or records fuel usage for the locomotives used for the Dairyland trains; and (e) computer-readable versions (both compiled and non-compiled), including supporting databases and necessary documentation, of any and all computer programs in UP's possession used to measure or estimate the fuel usage of locomotives moving Dairyland trains.

Request for Production No. 15:

Identify all locations in the States of Wyoming, Nebraska, Kansas, Missouri and Illinois where UP has performed fueling of locomotives used in Dairyland service from January 1, 2006 to present and produce documents sufficient to show the following information with respect to locomotive fueling at each such location: (a) the source of the fuel, including the name and location of the vendor(s) who provide the fuel to UP and the refinery(ies) or other location from which the fuel is obtained; and (b) the method and cost of transporting and dispensing the fuel from the refinery(ies) or other locations from which the fuel is obtained to the location where the fueling of locomotives is performed (this request includes but is not limited to the database maintained in the ordinary course of business by UP).

Request for Production No. 16:

Produce copies of all contracts/agreements between UP and third parties in effect on and after January 1, 2006 to present related to the performance of locomotive fueling functions on Dairyland trains.

Request for Production No. 17:

Produce all studies, analyses, or other documents (including summaries and supporting data), prepared on and after January 1, 2000, in a computer-readable format to the extent available, pertaining to the amount of fuel consumed by locomotives used on Dairyland trains or any other unit coal trains moving over all or a portion of the Dairyland route(s).

Request for Production No. 18:

To the extent not already produced in response to Dairyland's prior Requests, produce all documents that summarize and quantify the fuel portion of variable costs of providing service to Dairyland under Item 6630-E of UP Circular 111.

Respectfully submitted,

DAIRYLAND POWER COOPERATIVE

OF COUNSEL:

Slover & Loftus
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Washington, D.C. 20036

By: John H. LeSeur 
Frank J. Pergolizzi
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(202) 347-7170

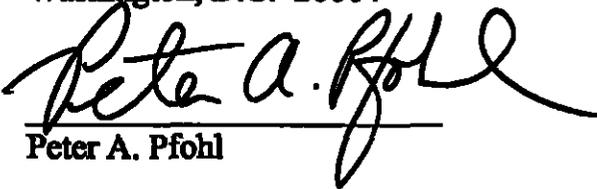
Dated: April 3, 2008

Attorneys for Complainant

CERTIFICATE OF SERVICE

I hereby certify, that I have this 3rd day of April, 2008 caused to be served copies of the above discovery requests by hand delivery upon outside counsel for Defendant Union Pacific Railroad Company, as follows:

Linda J. Morgan
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