

BEFORE THE
SURFACE TRANSPORTATION BOARD

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March 2, 2022
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Public Record

Sanimax USA LLC,	)	
	)	DOCKET NO. NOR 42171
Complainant,	)	
	)	
v.	)	
	)	
Union Pacific Railroad Company,	)	
	)	
Defendant.	)	

SANIMAX USA LLC'S OPENING STATEMENT

SANIMAX USA LLC

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SANIMAX USA LLC’S OPENING STATEMENT

I. INTRODUCTION

On August 3, 2020, Union Pacific Railroad (“UP”) unilaterally switched Sanimax to three-days-a-week of scheduled rail service, down from the five-days-a-week UP had provided for years. UP claims Sanimax needs only three-days-a-week, and in *theory*, that could be true. If UP consistently showed up on its scheduled days, and if it actually put the cars in the right place, Sanimax probably could get by on only three days of service.

But *reality* is far different. UP has a long history of late arrivals, misplaced cars (making them unusable until UP returns and moves them to the right spot) and service days missed altogether. Indeed, since this lawsuit began, a time when UP should be on its best behavior, the rate of UP’s missed or improper service is an astonishing [REDACTED]. And it’s getting worse. In 2022, as this case nears resolution, UP’s miss rate is up to almost [REDACTED]. Even if you believe UP’s own estimates – that Sanimax can survive on three-days-a-week – UP would need to provide *six* days on the schedule, since they are hovering around a [REDACTED] “success” rate.

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Sanimax cannot live like this, and neither can its suppliers and customers. Sanimax is a critical cog in multiple supply chains, taking animal by-products and converting them into finished goods such as animal feed, biofuels, soap or pet food. And rail is a crucial part of the business; it's how most rendering companies ship product to customers. When rail stops, the entire operation can be shut down, potentially causing raw material to rot. Which is no small matter. In 2021 alone, Sanimax processed over [REDACTED] pounds of raw material at the South St. Paul facility at issue in this lawsuit.

Something needs to change, and that something should be obvious: UP must return to the five-days-a-week service it had provided Sanimax for almost ten years. UP is the monopoly carrier at this facility, which means Sanimax cannot simply find alternative rail service. The only practical solution – and the correct legal remedy under UP's common carrier obligations – is for the Surface Transportation Board (the "Board") to order Union Pacific to resume providing five-days-a-week service.

II. BACKGROUND AND STATEMENT OF FACTS

A. Procedural History

Sanimax filed its complaint on November 6, 2020, seeking relief under 49 U.S.C. §§ 11101(a), 11101(c), and 10702(2), and asking the Board to "require UP to restore scheduled service to Sanimax to five days per week, and award damages to Sanimax for such violations as may be proven in an investigation of this Complaint."¹

On November 30, 2020, UP filed a motion to dismiss on the grounds that the commodities at issue were exempt from Board regulation. The Board denied the motion, finding that "the service

¹ *Sanimax USA LLC v. Union Pac. R.R.*, NOR 42171, document # 301268 at p. 11. (Nov. 6, 2020).

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issues raised by Sanimax . . . warrant closer examination and further development of the record.”
November 2, 2021 Decision at 6.²

On November 23, 2021, UP filed a petition for clarification of the retroactive effect of the November 2 Decision before November 2, 2021, the service date of the decision. In its February 25, 2022 decision, the Board agreed not to impose damages prior to November 2, 2021, but held that the parties could seek discovery with respect to pre-November 2, 2021 periods, and also held that the parties could make reference to pre-November 2, 2021 actions and occurrences in their arguments as to reasonable and adequate rail service on a *prospective* basis. As the Board observed, “the relevant facts giving rise to the complaint did not begin on the date the Board determined whether revocation was warranted. UP’s actions prior to that date may be relevant to the Board’s ultimate determination about what kind of prospective relief is warranted, if any.”³

As a result of these decisions, the key remaining issue for the Board to decide is the amount of service UP will provide Sanimax going forward: Will it be a return to the five-days-a-week that had proven adequate, or will Sanimax be stuck with the three days of service that has proven far less so?

B. Overview of Sanimax

Sanimax plays a key role in the agri-food industry by processing and reclaiming animal by-products and rendering them into finished goods, such as animal feed, yellow grease, soap, industrial chemicals, or pet food. (See Ex. 1, Second Verified Statement of Greg Rawe at Ex. A, ¶4.) This serves a critical role on both ends of the supply chain – allowing major food producers

² *Sanimax USA LLC v. Union Pac. R.R.*, NOR 42171 (STB served Nov. 2, 2021) (“November 2 Decision”).

³ *Sanimax USA LLC v. Union Pac. R.R.*, NOR 42171, slip op. at 4 (STB served Feb. 25, 2022) (“February 25 Decision”).

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to continue operating (without companies like Sanimax, they would have nowhere to send these animal by-products), and providing necessary ingredients for many essential products. (See Ex. 1, Rawe VS at Ex. A, ¶¶4-5.)

Sanimax's rendering facility in South St. Paul, MN is crucial to this goal. (See Ex. 1, Rawe VS at Ex. A, ¶¶3-5.) The South St. Paul facility typically collects and processes over [REDACTED] pounds of raw material. (See Ex. 2, Second Verified Statement of Todd Strickler at ¶5.) Inbound raw material arrives by truck six-days a week, (Ex. 1, Rawe VS at Ex. A, ¶8.), and it must be processed quickly. If raw material is not rendered in a timely manner, it will degrade and rot. (Ex. 1, Rawe VS at Ex. A, ¶¶11-12.) The degraded material will become unusable, cause nuisances, and create environmental issues, such as bacterial infections and noxious gas. (Ex. 1, Rawe VS at Ex. A, ¶12.)

After off-loading, receipt, and collection of the raw material by Sanimax, the South St. Paul facility renders the raw material into finished goods—such as animal feed, pet food, yellow grease, soap, or industrial chemicals. (Ex. 1, Rawe VS at Ex. A, ¶4.) The rendered material (now finished goods) must then be transported from the facility to its customers across North America, (Ex. 1, Rawe VS at Ex. A, ¶16.), and that's where UP comes in.

C. Sanimax's Relationship with UP as Monopoly Rail Carrier; Continued Rail Service Defaults

UP has provided rail service to Sanimax for over ten years. (See Ex. 2, Strickler VS, at Ex. A, ¶4.) They are the only option at this location, since UP owns the track and is therefore the monopoly carrier. For most of this time (up until August 2020), UP has provided five-days-a-week service (Ex. 2, Strickler VS at Ex. A, ¶5.), although performance has been spotty. UP has routinely provided late service, improper service, or failed to even show up on a scheduled service day. (See, e.g., Ex. 3, UP_000001; Ex. 2, Strickler VS at Ex. A, ¶ 6.)

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Sanimax has repeatedly submitted service complaints to UP in the hopes of resolving this short of litigation. (See Ex. 2, Strickler VS at Ex. A, ¶7.) In response to these complaints, UP has sometimes temporarily improved service, but UP's service soon regresses to its usual pattern of misses. (See Ex. 2, Strickler VS at Ex. A, ¶¶8-9.) For example, following a series of complaints about service frequency issues, Sanimax had an on-site meeting at the South St. Paul plant in August 2017 with several UP operational and supervisory personnel. (See Ex. 2, Strickler VS at Ex. A, ¶10.) Following this on-site meeting, UP placed Sanimax in the railroad's Customer Care program for 60 to 90 days. (See *id.*) During the weeks Sanimax was in the Customer Care program, UP's weekly service improved with fewer missed days of service. (See *id.*) Following the end of the program, however, UP's service quickly regressed and it again routinely missed *two or more days of service per week*. (See *id.*)

Sanimax's ability to maintain continuous operations has been hampered by UP's consistent service failures. With service scheduled for five days per week, Sanimax's limited storage capacity *may* have enough margin to avoid disrupting plant operations, but at considerable risk and cost. (See *generally* Ex. 1, Rawe VS at Ex. A, ¶¶16-18, 23.) When UP misses service, Sanimax scrambles to essentially "catch-up" on the remaining three to four days that week. (See *id.*)

But this margin for missed service is eliminated when UP goes to a three-day-a-week schedule. (See Ex. 2, Strickler VS at Ex. A, ¶18.) Any service days that UP misses during this reduced schedule forces Sanimax to find alternate transportation (trucking the material to other rail carriers, if that option is available), at an increased cost and financial loss or to *halt operations until UP shows up again*. (See Ex. 2, Strickler VS ¶¶7-9; Ex. 10, SANIMAX_UP_STB-0000079.)

D. UP's Improper and Unreasonable Service When the Trains Do Appear

UP's failure to schedule adequate rail service is aggravated by its regular misplacement of railcars at the South St. Paul plant.

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The facility has two tracks within the plant. Track 826 is used for loading with three positions (positions three through five) that accommodate loading tanker railcars and two positions (positions one and two) that accommodate loading hopper railcars. (Ex. 1, Rawe VS at Ex. A, ¶¶19-20.) Track 827 is a storage track that can store up to five railcars, a combination of tanker and hopper railcars, but this track does not have the infrastructure for loading railcars. (*Id.* at ¶22.)

UP has regularly misplaced railcars ordered for the loading track (826) onto the storage track (827), and placed hopper railcars in a tanker loading position and vice versa. (See Ex. 2, Strickler VS at Ex. A, ¶20; Ex. 11, SANIMAX_UP_STB-0000011.) These service defaults make it slow and difficult, and sometimes impossible, for Sanimax to ready the railcars for movement away from the plant because Sanimax cannot move the cars itself (only UP has that capability). (See, e.g., Ex. 1, Rawe VS at Ex. A, ¶21.)

E. UP's Decision to Alter Its Service to Sanimax

On July 17, 2020, UP notified Sanimax of its intention to decrease service from five to only three days per week, purportedly to “align our resources with customer demand.” (Ex. 2, Strickler VS at Ex. A, ¶ 11.) UP implemented the change on August 3, 2020. (Ex. 2, Strickler VS at Ex. A, ¶14.) In the week immediately following the change, *UP provided improper service to the South St. Paul facility on **all three service days***. (See Ex. 2, Strickler VS at Ex. A, ¶16; Ex. 4, UP_000311 at 311.)

F. UP's Continued Inability to Meet Sanimax's Service Needs

Since UP's reduction of service to only three days a week, UP has provided late service to the South St. Paul facility on at least [REDACTED] occasions and has entirely failed to show up at least [REDACTED] times. (See Ex. 3, UP_000001.) Roughly, this means UP has provided late service approximately [REDACTED] of the time and has failed to provide service approximately another [REDACTED] of the time. (See Ex. 3, UP_000001.) During the same time period, UP has provided improper service to the South St.

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Paul facility on at least [REDACTED] occasions. (See Ex. 11, SANIMAX_UP_STB-0000011; Ex. 3, UP_000001.) All told, UP's "miss rate" (late arrival + no arrival + misplaced cars) has been [REDACTED] since it reduced its schedule. And it's getting worse. In 2022, the miss rate has risen to almost [REDACTED] (Ex. 2, Strickler VS ¶10.)

Moreover, UP has consistently failed to satisfy its own goal of providing on time spot and pull performance [REDACTED] of the time. (See Ex. 6, UP_000021 at 24.) According to a September 14, 2020 presentation by UP, shortly after UP's decision to modify its service to Sanimax, UP had provided on time service to Sanimax only [REDACTED] of the time in 2017, [REDACTED] of the time in 2018, [REDACTED] of the time in 2019, and [REDACTED] of the time as of September 2020. (See *id.*) UP's failure to provide reliable service continued after August 3, 2020, as it provided on time service to Sanimax just [REDACTED] of the time for all of 2020 and [REDACTED] of the time in 2021. (See Ex. 3, UP_000001.)

UP is the only rail carrier serving the South St. Paul facility. As a result, when UP fails to provide rail service or provides improper rail service—*e.g.*, through the improper placement of railcars—Sanimax's only alternative is to utilize truck transportation to address the critical situation. (Ex. 1, Rawe VS at Ex. A, ¶23.) More importantly, UP's failure forces Sanimax to transfer product to a trans-loading facility in order to serve those customers for which rail is the only viable transportation option—an entirely unnecessary additional step save for UP's service failures. (Ex. 2, Strickler VS ¶9.)

As a result of UP's failures to provide proper service, Sanimax has had to make [REDACTED] [REDACTED] to Sanimax operated or third-party trans-loading stations where the finished goods are then transferred to railcars for shipment to customers. (See Ex. 10, SANIMAX_UP_STB-0000079; Ex. 12, SANIMAX_UP_STB-0000018.) During the period of August 2020 through mid-January 2022, Sanimax has paid approximately [REDACTED] in increased costs associated with trucking

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transportation to trans-load its finished goods to correct UP's failed or improper service. (See Ex. 10, SANIMAX_UP_STB-0000079.)⁴ In addition, Sanimax can obtain higher prices from certain customers for its finished goods when sold and delivered by rail. (See Ex. 10, SANIMAX_UP_STB-0000079.)

G. Public Interest

Maintaining reliable agri-food industry supply chains is in the public interest of the United States. The COVID-19 pandemic has caused significant disruptions to the nation's food and agriculture supply chains.⁵ These disruptions are exacerbated by an ongoing shortage of truck drivers needed to deliver goods across the United States.⁶ The labor shortage has driven up truck transportation costs and increased delays in delivering goods.⁷ For instance, the Wall Street Journal

⁴ Sanimax's description of UP's rail service defaults and failures since August 2020 and indeed well before then – that is, before the service date of the Board's November 2 Decision – and continuing to the present day, in order to support Sanimax's request for prospective relief, is consistent with the Board's decision not to impose retroactive liability on UP. See February 25 Decision at 4. Indeed, it complies with the specific guidance provided by the Board:

[D]evelop[ing] a full record regarding prospective liability and relief ... may include arguments based on and discovery into events that occurred prior to the date of partial revocation [Nov. 2, 2021], to the extent relevant. ... *[T]he relevant facts giving rise to the complaint did not begin on the date the Board determined whether revocation was warranted.* UP's actions prior to that date may be relevant to the Board's ultimate determination about what kind of prospective relief is warranted, if any.

February 25 Decision at 4 (emphasis added).

⁵ See Susan Helper & Evan Soltas, *Why the Pandemic Has Disrupted Supply Chains*, The White House (June 17, 2021), <https://www.whitehouse.gov/cea/written-materials/2021/06/17/why-the-pandemic-has-disrupted-supply-chains/>.

⁶ See Jennifer Smith, *Where Are All the Truck Drivers? Shortage Adds to Delivery Delays*, Wall St. J. (Nov. 3, 2021), <https://www.wsj.com/articles/truck-driver-shortage-supply-chain-issues-logistics-11635950481>.

⁷ See *id.*

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reported that in September 2021, the average spot market cost to hire a big rig truck increased 14% year-over-year, and the average long-term contract rate for truck transportation increased 23% over that period.⁸

President Biden himself recognized via Executive Order on February 24, 2021 that reliable supply chains facilitate “greater domestic production, a range of supply, built-in redundancies, adequate stockpiles, safe and secure digital networks, and a world-class American manufacturing base and workforce.”⁹ Thus, Executive Order 14017 focused on resolving current supply chain disruptions and creating more resilient supply chains for the future, including agricultural commodities and food production supply chains.¹⁰ As the relevant federal agencies develop reports in response to the Executive Order 14017, the supply chain constraints continue to disrupt food supplies in the United States.

Accordingly, having access to reliable rail transportation to support key agri-food industry participants such as Sanimax is *more important than ever*.¹¹ See generally 49 U.S.C. § 10101(5) (element of national Rail Transportation Policy “to ensure the development and continuation of a sound rail transportation system ... to meet the needs of the public and the national defense”).

⁸ See *id.*

⁹ See Exec. Order No. 14017, 86 Fed. Reg. 11849 (Feb. 24, 2021).

¹⁰ *Id.*

¹¹ The US Department of Agriculture has issued its report in response to Executive Order 14017. USDA AGRI-FOOD SUPPLY CHAIN ASSESSMENT: PROGRAM AND POLICY OPTIONS FOR STRENGTHENING RESILIENCE (Feb. 2022) (“USDA Report”), <https://www.ams.usda.gov/sites/default/files/media/USDAAgriFoodSupplyChainReport.pdf>. Among other things, the USDA Report raises supply chain concerns arising from more and more shippers in the agri-food sector, heavily reliant on rail transportation, being captive to a single monopoly railroad. See USDA Report at 35. As explained in this opening statement, Sanimax is an example of that.

III. ARGUMENT

A. Summary of Argument

Union Pacific unilaterally reduced its scheduled weekly service to Sanimax from five days to three. This reduction of service frequency, in the circumstances of this case, clearly and unreasonably disrupted Sanimax's business operations, and is itself a violation of UP's common carrier obligation to Sanimax under 49 U.S.C. § 11101(a) to provide *adequate* rail transportation at a shipper's reasonable request.

Moreover, UP's three-days-per-week service did not and does not account for the foreseeable disruptions that prevent UP from consistently meeting even its reduced service schedule. Timely and reliable service of adequate frequency is critical to ensure that Sanimax's operations – and ultimately the overall agri-food supply chain – are not disrupted. Thus, UP's failure to consider its effective service based on foreseeable disruptions constitute an unreasonable practice related to its common carrier transportation service in violation of 49 U.S.C. § 10702(2).

The statutory violations are sharpened in this case where Sanimax is captive to UP's monopoly rail service at its South St. Paul plant and has no practical alternative for outbound transportation of its products.

In light of UP's poor service that makes scheduled three-days-per-week service frequency in reality much *less* than three days per week in practice, UP's current service schedule simply does not satisfy Sanimax's reasonable business needs nor the statutory common carrier standards with which UP must comply. In order to remedy these statutory violations, the Board should order UP to resume providing rail service at Sanimax's plant five days per week. Any remedy imposed by the Board requiring UP to provide better and more reliable service that meets Sanimax's

reasonable requirements would be welcome – but realistically, increased service frequency is the simplest and most effective resolution.¹²

B. Legal Standards for Common Carrier Service and Service Practices

A rail carrier subject to the Board’s jurisdiction “shall provide the transportation or service on reasonable request,” 49 U.S.C. § 11101(a), and must “establish reasonable . . . rules and practices in matters related to [rail] transportation or service.” 49 U.S.C. § 10702(2). The Board “has been given broad discretion to conduct case-by-case fact-specific inquiries to give meaning to these terms, which are not self-defining, in the wide variety of factual circumstances encountered.” *Granite State Concrete Co., Inc. v. Surface Trans. Bd.*, 417 F.3d 85, 92 (1st Cir. 2005). Moreover, as Board counsel argued and the Court of Appeals agreed in the *Granite State* case, provision of rail common carrier service on reasonable request under 49 U.S.C. §§ 11101(a) includes an obligation to provide *adequate* rail service. *See Granite State*, 417 F.3d at 92. “‘Adequate service’ (as opposed to just ‘service’) is not in the language of section 11101, but it is a part of the general definition of common carrier obligations.” *Granite State*, 417 F.3d at 92 n.10 (citing *Nat’l Grain and Feed Ass’n v. United States*, 5 F.3d 306, 311 (8th Cir. 1993) (discussing “adequate” common carrier service in car service context)); *see also Wales Transp., Inc. v. Interstate Commerce Comm’n*, 728 F.2d 774, 780 n.9 (5th Cir. 1984) (discussing “adequate” common carrier service in motor carrier context).

¹² In the November 2 Decision, the Board held that revocation of the commodity exemptions allowing Sanimax’s complaint to proceed furthered the national Rail Transportation Policy (RTP), 49 U.S.C § 10101. A Board order requiring UP to provide reliable service to Sanimax of adequate frequency would further the same RTP goals as the exemption revocation itself: 49 U.S.C § 10101(2) (minimizing regulatory control while requiring fair and expeditious regulatory decisions when needed, as in this case); 49 U.S.C § 10101(4) (ensuring a sound and competitive rail system that meets the needs of the public). *See* November 2 Decision at 5-7.

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Specifically with respect to *service frequency*, the core of UP’s unlawful service defaults in this case (*i.e.*, UP’s unilateral reduction to three-days-per-week service, maintained to this day), the Board has expressly stated that “frequency of service can be a relevant consideration in determining whether a rail carrier has met its common carrier obligations under § 11101(a).” *Bell Oil Terminal, Inc. v. BNSF Railway Co.*, NOR 42169, slip op. at 4 (STB served Dec. 23, 2020). In contrast to the complainant in the *Bell Oil* case, Sanimax most assuredly is arguing that “reduction in [UP’s] frequency of service [to three days per week] violated . . . [UP’s] general common carrier obligation,” and the Board should find that UP violated § 11101(a) on those grounds. *Id.*

Another instructive case in which a rail carrier’s service level reduction, in and of itself, was held to violate a common carrier obligation to provide adequate service on reasonable demand is *Interstate Commerce Comm’n v. Chesapeake & Ohio Ry. Co.*, 438 F. Supp. 666, 667-68 (W.D. Mich. 1977). In that case, the court, on application of the Interstate Commerce Commission and two affected states on Lake Michigan, expressly held that a railroad’s reduction of its car ferry service from three ferries to two during the summer sailing season violated the applicable statutory and regulatory common carrier obligation imposed on the defendant carrier. *Id.* at 668. According to the court, in language that could apply very directly to UP in the instant case, “the plaintiffs have met their burden of demonstrating that the defendant will not be able to satisfy *its statutory and administrative mandate of providing adequate service upon reasonable demand* with the operation of two vessels during the month of August, 1977,” comparable to UP’s restricted three-days-per-week service to Sanimax.” *Id.* (emphasis added). Accordingly, the defendant was ordered

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“to institute and advertise three vessel car-ferry service on its cross Lake Michigan transit route [a remedy comparable to an order for UP to provide five-days-per-week service to Sanimax].” *Id.*¹³

In another important decision, the Board allowed a customer’s complaint to proceed against a rail carrier for violating common carrier obligations under 49 U.S.C. §§ 11101(a) and 10702(2), where the customer had come to rely more and more on the carrier’s rail service and made significant rail infrastructure investments in reliance on the service, and then the carrier began imposing unreasonable conditions and service restrictions – very similar in principle to the situation at South St. Paul with UP as the monopoly rail carrier (*see* Ex. 7, SANIMAX_UP_STB-0000218; Ex. 8, SANIMAX_UP_STB-0000006; Ex. 9 SANIMAX_UP_STB-0000007 (noting amounts already spent and potential future investment by Sanimax into upgraded rail infrastructure)). *See Cent. Valley Ag Grinding, Inc. v. Modesto & Empire Traction Co.*, NOR 42159, slip op. at 2-3, 4-5 (STB served July 25, 2018). In general, refusing a customer’s reasonable request for service supports an action against the rail carrier under § 11101(a). *See Louisiana Railcar, Inc. v. Missouri Pac. R.R. Co.*, 5 I.C.C. 2d 542 (1989) (“We find that [Missouri Pacific] failed to provide service on reasonable request and therefore violated § 11101(a) of the Interstate Commerce Act”).

Under 49 U.S.C. § 10702(2), a rail carrier “shall establish reasonable . . . rules and practices on matters related to that transportation or service.” Whether a particular practice is reasonable under § 10702(2) is highly fact-specific. “Congress did not limit the Board to a single test or

¹³ The statutory common carrier obligation in this *Chesapeake & Ohio* case, to provide adequate transportation service on reasonable demand, appeared in the water common carrier statute rather than rail. However, as noted in the *Granite State* cited above, common carrier obligations under other transportation statutes are highly relevant to the scope of the rail common carrier obligation with which UP must comply under 49 U.S.C. § 11101(a). *See Granite State, supra*, 417 F.3d at 92 n.10 (construing 49 U.S.C. § 11101(a) in reliance on the “general definition of common carrier obligations”).

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standard for determining whether a practice is unreasonable; instead, it gave the Board ‘broad discretion to conduct case-by-case fact-specific inquiries to give meaning to those terms, which are not self-defining, in the wide variety of factual circumstances encountered.’” *Arkansas Elec. Coop. Corp. – Petition for Declaratory Order*, FD 35305, slip. op. at 5 (STB served Mar. 3, 2011) (quoting *Granite State*, 417 F.3d at 92)); *see also* *WTL Rail Corp. – Petition For Declaratory Order and Interim Relief*, NOR 42092, slip op. at 6 (STB served Feb. 17, 2006) (§ 10702(2) does not define “what constitutes an unreasonable practice” and “Congress committed such decisions to the Board”); *see also* November 2 Decision at 5, 6 (relying on *WTL Rail Corp.* analysis with respect to RTP factors to support revocation of exemption in the instant case).

Under the Board’s broad authority to determine if the facts support a finding of an unreasonable practice under § 10702(2), UP’s poor and unreliable service at Sanimax’s South St. Paul plant supports such a finding here.

C. UP’s Scheduling Must Take Into Account Foreseeable Service Problems

For more than a decade, UP provided five days of weekly service to Sanimax’s South St. Paul facility. *See* Ex. 2, Strickler VS at Ex. A, ¶¶4-5. In August 2020, UP reduced scheduled service to Sanimax’s South St. Paul facility from five days per week to three days per week based on UP’s estimate of Sanimax’s weekly utilization rate. *See* Ex. 2, Strickler VS at Ex. A, ¶14. Based on this estimated utilization rate, [REDACTED]. *See* Ex. 5, UP_000142, at 142-145.

This scheduled service, however, did not take into account UP’s history of service problems that would effectively prevent UP from consistently providing the weekly service level that the railroad’s own estimates indicate Sanimax would need. Based on the service history to Sanimax’s South St. Paul facility, this disconnect between the thrice-weekly service scheduled by

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UP and the service that UP *has actually provided* was, and continues to be, inadequate and unreasonably poor service in violation of 49 U.S.C. §§ 11101(a) and 10702(2).

Since August 3, 2020, UP has provided late service to the South St. Paul facility on at least [REDACTED] occasions and has missed servicing the facility on at least [REDACTED] occasions. *See* Ex. 3, UP_000001. Roughly, this means UP has provided late service approximately [REDACTED] of the time and has failed to provide service approximately another [REDACTED] of the time since August 3, 2020. *See* Ex. 3, UP_000001. In addition, UP has provided improper service to South St. Paul facility on at least [REDACTED] occasions. *See* Ex. 11, SANIMAX_UP_STB-0000011.

Sanimax has repeatedly submitted complaints to UP regarding late service, improper service, or failed service to the South St. Paul facility, all to no avail (at least beyond short-term “fixes” that never last). *See, e.g.*, Ex. 3, UP_000001; Ex. 2, Strickler VS at Ex. A, ¶¶6-7. On those occasions where UP has improved its service, those efforts have proved temporary and service has quickly regressed to UP’s typically and regrettably poor service level. Sanimax’s frustrating experience with UP’s Customer Care program for 60 to 90 days described above at page five, after which UP’s service quickly regressed to its previous unacceptable levels after the program ended, is an unfortunate example of this. *See* Ex. 2, Strickler VS at Ex. A, ¶10.

Crucial language in § 11101(a) is that the rail carrier shall “provide” service on reasonable request – meaning adequate service. *Providing* actual adequate service is not synonymous with scheduling *theoretical* service. As a practical matter, UP falls short of providing even three days per week of actual service. Based on this history, UP should have foreseen the expected deficiencies in reducing scheduled service to three days per week. A Board order requiring UP to schedule (and provide) five days of service per week is consistent with what the law requires and would go far toward alleviating the problems caused by UP’s consistent service defaults.

D. Specific Rail Service Problems That the Board Can Remedy

While common carrier obligations may not require a perfect service record, Sanimax's critical role in the food supply chain and its sensitivity for timely service require that the service provided by UP must meet Sanimax's reasonable needs each week. Sanimax operates on a continuous basis to ensure that it keeps up with flow of raw materials from slaughterhouses, meat processing plants, and butcher shops. *See* Ex. 1, Rawe VS at Ex. A, ¶¶4, 8. Sanimax's limited ability to store inbound raw material due to factors such as volume, decomposition and time constraints, its limited capacity to store rendered product that is ready for outbound service, and its critical position in the food supply chain compel Sanimax to ensure that it obtains adequate outbound service to avoid halting its rendering operations. *See* Ex. 1, Rawe VS at Ex. A, ¶¶7, 23. Shutting down operations is not a viable option, from an environmental perspective, or from the perspective of the food supply chain.

UP is the only rail carrier providing rail service at Sanimax's South St. Paul facility. Sanimax is completely reliant on this monopoly rail service for successful operation of its business – and has relied on this service in making substantial investments in rail infrastructure at the South St. Paul facility. *See* Ex. 7, SANIMAX_UP_STB-0000218; Ex. 8, SANIMAX_UP_STB-0000006; Ex. 9, SANIMAX_UP_STB-0000007. When UP fails to provide rail service or provides improper rail service, Sanimax must find alternative outbound service to avoid disrupting its operations. *See* Ex. 1, Rawe VS at Ex. A, ¶23; Ex. 2, Strickler VS ¶¶7-9. To address this critical situation, Sanimax must use outbound truck service. *See id.* Importantly, Sanimax must arrange for alternate rail transport to customers that demand delivery by rail. Due to UP's failure to provide reliable and sufficient levels of weekly service, Sanimax must transfer product on trucks to a trans-loading facility in order to serve those customers – an entirely unnecessary, additional step compelled by UP's service failures. *See id.*

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During the period of August 2020 through mid-January 2022, Sanimax has made [REDACTED] shipments to its own or third-party trans-loading stations to transfer outbound material from trucks to railcars for shipment to customers. *See* Ex. 10, SANIMAX_UP_STB-0000079; Ex. 12, SANIMAX_UP_STB-0000018. During that same period Sanimax has paid approximately [REDACTED] in increased costs associated with trucking transportation to trans-load its finished goods to correct UP's failed or improper service. *See* Ex. 10, SANIMAX_UP_STB-0000079.

UP has consistently failed to provide proper common carrier rail service for Sanimax's South St. Paul facility. Sanimax's critical role in the food and agri-business supply chain demands that UP meet the weekly rail service needs of the South St. Paul facility. By restricting its service to three days per week in the first place, and by failing to account for its *effective* service level when scheduling weekly service, UP has violated its statutory obligations. An order from the Surface Transportation Board requiring UP to reimplement five-days-per-week service would be an appropriate remedy in these circumstances.¹⁴

IV. CONCLUSION

The statutory requirements for common carrier rail service under 49 U.S.C. §§ 11101(a) and 10702(2) compel Union Pacific to provide adequate rail service at Sanimax's reasonable request, and to follow reasonable practices to ensure it provides the reasonably requested service. Applying these requirements to the specific facts of this case must take into account both the

¹⁴ Under the February 25 Decision, Sanimax could pursue money damages for UP's service failures beginning as of November 2, 2021, the service date of the November 2 Decision – that is, for a four-month period as of today (March 2, 2022). In order to reduce complexities and keep the focus on the prospective rail service relief that is Sanimax's primary need by far, Sanimax is holding its damages claim in abeyance at this time. If the Board's resolution of this case permits it, Sanimax requests the opportunity to submit evidence as to damages at an appropriate future time and have the Board determine damages for the period beginning November 2, 2021.

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reasonable needs of Sanimax as the shipper, and UP's ability to actually provide the scheduled service on a reliable basis.

When UP restricted service to three days per week at Sanimax's South St. Paul facility, it unreasonably failed to account for foreseeable service failures and the minimum level of service necessary to ensure Sanimax could continue operating in its critical role in the food supply chain. Due to this failure to provide adequate transportation on reasonable request, UP violated its statutory common carrier obligations.

Sanimax has demonstrated that UP's three-days-per-week service at Sanimax's South St. Paul plant does not, in practice, comply with the applicable common carrier statutes. Accordingly, the Board should order UP to schedule five days of rail service each week at the South St. Paul facility to assure that in practice Sanimax obtains rail service that is sufficient for the reasonable needs of its business.¹⁵

¹⁵ As noted previously, Sanimax would welcome any remedy imposed by the Board requiring UP to provide better and more reliable service that meets Sanimax's reasonable requirements. Realistically, however, increased service frequency mandated by the Board would be the simplest and most effective resolution.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 2, 2022, the foregoing Sanimax USA LLC's Opening Statement was served by email and first class mail on Union Pacific's attorneys at the following addresses:

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