

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
March 16, 2017
Part of
Public Record

NORTH AMERICA FREIGHT CAR
ASSOCIATION; AMERICAN FUEL &
PETROCHEMICALS MANUFACTURERS;
THE CHLORINE INSTITUTE; THE
FERTILIZER INSTITUTE; AMERICAN
CHEMISTRY COUNCIL; ETHANOL
PRODUCTS, LLC D/B/A POET ETHANOL
PRODUCTS; POET NUTRITION, INC.; and
CARGILL INCORPORATED,

Complainants,

v.

UNION PACIFIC RAILROAD COMPANY,

Defendant.

NOR 42144

UNION PACIFIC'S FIRST BI-WEEKLY STATUS REPORT

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March 16, 2017

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In accordance with the March 3, 2017, order of Administrative Law Judge John P. Dring,
Union Pacific submits the following discovery status report.

Union Pacific and POET Ethanol continue to communicate regarding information that POET Ethanol produced in discovery. On March 6, POET Ethanol responded to a February 23 letter from Union Pacific. On March 8, Union Pacific sent a letter containing certain follow-up questions regarding POET Ethanol's March 6 response and certain additional questions about documents produced by POET Ethanol. POET Ethanol responded to Union Pacific's March 8 letter on March 15, and Union Pacific is evaluating that response. Union Pacific anticipates it

will have additional questions about POET Ethanol's discovery responses as it continues to review those responses in preparation for depositions.

Cargill still has not completed its production of documents. On March 13, Cargill responded to a February 13 letter in which Union Pacific requested information necessary to evaluate certain data produced by Cargill. Also on March 13, Cargill separately responded to certain Requests for Admission to which it had agreed to respond in September 2016. Union Pacific is evaluating the March 13 responses.

B. Document Production By Union Pacific

Union Pacific produced additional documents to Complainants on February 28. Union Pacific produced updated traffic data to Complainants on March 10. Union Pacific believes its production of documents and other information is now complete. Union Pacific will produce its privilege log within 60 days of this report, in accordance with the parties' negotiated "Protocol for the Production of Electronically-Stored Information and Paper Documents."

C. Depositions

Union Pacific, POET Ethanol, and POET Nutrition are working to identify convenient dates on which to depose POET witnesses and have tentatively identified dates in late April.

Cargill still has not responded to Union Pacific's January 19 deposition notice.

D. Tank Car Owner ("TCO") Discovery

Union Pacific and Union Tank Car Company ("UTC") successfully addressed UTC's concerns about search terms to be used for UTC's electronic searches of discovery material. American Railcar Industries, Inc. ("ARI") ceased participating in those discussions and presumably found a way to resolve its concerns. Union Pacific is continuing to engage in separate discussions with GATX Corporation. No TCO has yet produced any documents.

Union Pacific expects to receive TCO-related data from Railinc this week or early next week. Union Pacific's consultants will review the information to ensure that it is complete, and Union Pacific will then make the information available to the Complainants and TCOs in accordance with the October 13, 2016 order of Administrative Law Judge Dring.

E. Privilege Logs

As stated above, Union Pacific will produce its privilege log within 60 days of the date of this report. Union Pacific has not received privilege logs from Cargill, POET Nutrition, POET Ethanol, North America Freight Car Association, or American Fuel & Petrochemical Manufacturers.

Respectfully submitted,

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March 16, 2017

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of March, 2017, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or a more expeditious manner of delivery, on all of the parties of record in NOR 42144.

I also caused a copy of the foregoing document to be served by hand on Administrative Law Judge John P. Dring, Federal Energy Regulatory Commission Office of Administrative Law Judges, 888 First Street, N.E., Washington DC 20426.

/s/Michael L. Rosenthal
Michael L. Rosenthal