

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
April 13, 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.

STB Docket Nos. NOR 42144, *et al.*
(Consolidated)

UNION PACIFIC'S THIRD BI-WEEKLY STATUS REPORT

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April 13, 2017

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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	)	STB Docket Nos. NOR 42144, <i>et al.</i>
CARGILL INCORPORATED,	)	(Consolidated)
	)	
Complainants,	)	
	)	
v.	)	
	)	
UNION PACIFIC RAILROAD COMPANY,	)	
	)	
Defendant.	)	
	)	

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

On April 3, 2017, following the Board's March 31 Order consolidating STB Docket Nos. NOR 42144, 42150, and 42152, Union Pacific communicated with Valero and Tesoro to offer suggestions for expeditiously addressing procedural matters relating to discovery. The parties conferred by telephone later that day.

On March 24, Union Pacific requested additional information regarding lease agreements produced by POET Nutrition and identified additional documents that appeared to be missing from POET Nutrition's productions. On March 28, POET Nutrition agreed to provide some of

the missing information, and it agreed to look into related matters identified in a March 28 follow-up request by Union Pacific. Union Pacific is still awaiting production of the missing information and a response to its follow-up request.

Cargill still has not completed its production of documents nor indicated to Union Pacific the extent of the remaining documents or data to be produced.

B. Document Production By Union Pacific

As stated in the prior status report, Union Pacific believes it has completed its production of documents and other information.

C. Depositions

Union Pacific, POET Ethanol, and POET Nutrition have finalized dates for depositions of POET Ethanol and POET Nutrition representatives. The depositions will take place April 27-28.

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

D. Tank Car Owner ("TCO") Discovery

On April 3, Union Pacific and Trinity successfully addressed Trinity's concerns about search terms to be used for Trinity's electronic searches of discovery material. On April 6, Union Pacific and ARI successfully addressed ARI's concerns about search terms to be used for ARI's electronic searches of discovery material. Also on April 6, UTC produced discovery material to Union Pacific. Union Pacific is continuing to engage in discussions with GATX Corporation regarding document production issues.

E. Privilege Logs

Union Pacific is preparing its privilege log and anticipates producing it by May 15 in accordance with the parties' negotiated "Protocol for the Production of Electronically-Stored Information and Paper Documents." On March 22, North America Freight Car Association produced its privilege log and stated it has identified emails that were mistakenly withheld as

privileged and that will be produced to Union Pacific “in due course.” Union Pacific is still awaiting production of these additional documents. On April 4, American Fuel & Petrochemical Manufacturers produced its privilege log. On April 13, POET Nutrition and POET Ethanol represented that they had no documents to be logged in a privilege log. Union Pacific has not received a privilege log from Cargill.

Respectfully submitted,

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April 13, 2017

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of April, 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