

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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April 18, 2022
Part of
Public Record

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

SANIMAX USA LLC'S REBUTTAL STATEMENT

SANIMAX USA LLC

Complainant

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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	THE EVIDENCE SHOWS UNION PACIFIC HAS NOT SATISFIED ITS COMMON CARRIER OBLIGATION	2
A.	Union Pacific Misconstrues the Evidence on Rail Service.....	2
B.	Even Union Pacific’s [REDACTED] On Time Arrival Approach Does Not Satisfy UP’s Common Carrier Obligation	5
C.	UP’s Description of Sanimax’s Railcar Utilization Is Incomplete	7
D.	UP’s “Network” Obligations Are Not Relevant and Are Unsupported by the Evidence.....	8
III.	REBUTTAL LEGAL ARGUMENT	9
IV.	CONCLUSION.....	13
	EXHIBITS 13-15	

TABLE OF AUTHORITIES

	<u>Page(s)</u>
Federal Cases	
<i>De Bruce Grain, Inc. v. Union Pacific R.R. Co.</i> , STB Docket No. 42023 (STB served Dec. 22, 1997).....	11, 12
<i>Granite State Concrete Co., Inc. v. Surface Trans. Bd.</i> , 417 F.3d 85 (1st Cir. 2005).....	9
<i>GS Roofing Prods. Co. v. Surface Trans. Bd.</i> , 143 F.3d 387 (8th Cir. 1998)	9
<i>Joint Petition for Service Order</i> , STB Service Order No. 1518, 3 S.T.B. 44 (served Feb. 28, 1998), 3 S.T.B. 28 (served Feb. 17, 1998), 2 S.T.B. 744 (served Dec. 4, 1997), 2 S.T.B. 725 (served Oct. 31, 1997)	12
<i>Meyer v. N. Coast R.R. Auth.</i> , FD 34337, slip op. (STB served Jan. 31, 2007).....	10, 11
<i>Savannah Port Terminal R.R., Inc. – Pet. for Decl. Order</i> , FD 34920, slip op. (STB served May 30, 2008).....	9, 10
Federal Statutes	
49 U.S.C. § 11101	10, 11
Other Authorities	
Surface Transportation Board Press Release, <i>STB Issues Hearing Notice for Urgent Issues in Freight Rail Service</i> (Apr. 7, 2022), www.stb.gov/news-communications/latest-news/pr-22- 21/	13
Union Pacific Railroad Supplier Excellence Manual (Oct. 15, 2020), https://www.up.com/cs/ groups/public/@uprr/@suppliers/documents/up_pdf_nativedocs/wcccon1059797.pdf	6
USDA AGRI-FOOD SUPPLY CHAIN ASSESSMENT: PROGRAM AND POLICY OPTIONS FOR STRENGTHENING RESILIENCE (Feb. 2022), https://www.ams.usda.gov/sites/ default/files/media/USDAAgriFoodSupplyChainReport.pdf	1

TABLE OF EXHIBITS

EXHIBIT	DESCRIPTION
13	Industry Spot & Pull Report Since August 3, 2020, based on UP_000001
14	Union Pacific Railroad Company's Responses to Sanimax USA LLC's First Set of Requests for Production of Documents, served January 12, 2022
15	Third Verified Statement of Todd Strickler

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Defendant.	)	

SANIMAX USA LLC’S REBUTTAL STATEMENT

I. INTRODUCTION

Sanimax USA LLC (“Sanimax”) respectfully submits this Rebuttal Statement in response to the Reply Evidence of Union Pacific Railroad Company (“UP”), as filed on April 1, 2022 (“UP Reply”).

The UP Reply presents a misleading narrative. According to UP, Sanimax’s reasonable demand for adequate rail service is an unseemly scramble for “increase[d] profitability” (UP Reply at 2, 3), while UP, acting in the public interest, seeks only to maintain its freight rail network for the good of all.

The reality is quite different. First, Sanimax is a key component of the transcontinental agri-food supply chain, which remains fragile.¹ Sanimax and other rendering companies process

¹ USDA AGRI-FOOD SUPPLY CHAIN ASSESSMENT: PROGRAM AND POLICY OPTIONS FOR STRENGTHENING RESILIENCE (Feb. 2022) (“USDA Report”) at 1 (summarizing “U.S. agri-food supply chain challenges”) <https://www.ams.usda.gov/sites/default/files/media/USDAAgriFoodSupplyChainReport.pdf>.

animal by-products into necessary commercial and household goods 24 hours a day, keeping decomposing raw materials out of landfills. Certainly Sanimax is a for-profit enterprise, seeking to control costs in order to stay in business. But its core mission supports the communities where it operates and where its employees live, and the nation as a whole.

Second, UP points to its obligations to its network as justification for restricting its service to Sanimax, referring to its “network” over two dozen times in its Reply. Yet, UP never explains what it means by that term, nor does UP share with the Board that UP’s position in discovery was that “information about other UP customers are not reasonably calculated to lead to the discovery of admissible evidence in this proceeding.” *See* Ex. 14, UP’s Responses to Sanimax’s First Set of Requests for Production of Documents at 3. Contrary to UP’s position, *UP’s network is its rail shipper customers*, not some abstraction to which the interests of an actual customer like Sanimax are subordinate.

Third, the law requires that UP manage its network of customers by providing reasonable and adequate rail service to its customers large and small. In this case, it can meet its legal obligation by scheduling five-days-per-week service to Sanimax’s South St. Paul facility, as it did for many years before *UP’s unilateral* service cutback on August 3, 2020.

II. THE EVIDENCE SHOWS UNION PACIFIC HAS NOT SATISFIED ITS COMMON CARRIER OBLIGATION

A. Union Pacific Misconstrues the Evidence on Rail Service

Contrary to UP’s characterization of Sanimax’s evidence as merely anecdotal, the evidence demonstrates UP’s systemic failure to fulfill its common carrier obligations. Since August 3, 2020, UP has been scheduled to provide rail service to the South St. Paul facility on [REDACTED] occasions. *See* Sanimax USA LLC’s Opening Statement, *Sanimax USA LLC v. Union Pacific R.R. Co.*, STB Docket No. NOR 42171, at Ex. 3 (filed Mar. 2, 2022) (“Sanimax Opening Statement”);

see also Ex. 13. During that time, UP's own evidence shows that UP has provided late service to the South St. Paul facility on at least [REDACTED] occasions ([REDACTED] of those occasions) and has failed to provide railcars on at least [REDACTED] occasions ([REDACTED] of those occasions). *See* Sanimax Opening Statement at 6, Ex. 3; *see also* Ex. 13. Further, UP has provided improper service to the South St. Paul facility on at least [REDACTED] occasions ([REDACTED] of the occasions). *See* Sanimax Opening Statement at 6-7.

UP asserts that these metrics are "wrong and unsupported by the evidence." *See* UP Reply at 1. However, the metrics concerning UP's failure to provide service are supported by *UP's own documents* cited by Sanimax in its opening statement.² *See, e.g.,* Sanimax Opening Statement at 6 (citing to Ex. 3, a document produced by UP). Contrary to UP's claims that these numbers are "wrong" or "unsupported" by the evidence, they simply reflect Sanimax's methodology of measuring UP's performance data, instead of UP's methodology – and Sanimax's methodology is the correct one. UP does not seem to appreciate this difference.

UP asserts that, since August 3, 2020, its early or on-time performance to the South St. Paul facility has averaged approximately [REDACTED]. *See* UP Reply at 5-6. In formulating its [REDACTED] early or on-time performance, UP is measuring the total number of cars ordered by Sanimax against the number of cars that arrived late or were not delivered. *See* UP Reply at Ex. 2. In comparison, Sanimax's Opening Statement compared the number of days that UP serviced its South St. Paul

² In particular, UP takes issue with Sanimax's use of a [REDACTED] miss rate. *See* UP Reply at 1. Sanimax calculated this rate by addition of the number of days on which UP was late, failed to supply a railcar, or provided improper service over the total number of scheduled service days (([REDACTED])). Sanimax recognizes that this may double count days. Accounting for double counted days still reveals a miss rate of approximately [REDACTED]. According to UP's data, UP provided late service or failed to supply a railcar on at least [REDACTED] unique days since August 3, 2020. *See* Ex. 13. In addition to the [REDACTED] days when UP provided improper service, UP's miss rate was approximately [REDACTED] (([REDACTED])).

facility against how many days UP was late or failed to provide at least one railcar. *See* Sanimax Opening Statement at Ex. 3; *see also* Ex. 13.

Sanimax's measurement of UP's performance is a more accurate reflection of the impact UP's failures impose on Sanimax's operations. As explained throughout the case, Sanimax operates continuously and has limited capacity to store completed materials. *See* Sanimax Opening Statement at 4-5. UP's preferred metric – an average based on the total number of cars – normalizes the data across the time period to create a misleading narrative that the distribution of these service failures does not matter.

At Sanimax's South St. Paul facility, the distribution of those service failures matters a great deal to its daily operation. For example, suppose Sanimax ordered nine railcars for delivery on Tuesday and one railcar on Thursday. If UP completed its Tuesday delivery on-time but failed to deliver any car on Thursday, UP would still claim a 90% on-time performance rate, despite missing an *entire day* of service to the South St. Paul facility.

This example is not simply a hypothetical risk. Between Oct. 3, 2021 and Oct. 13, 2021, Sanimax requested service for █ total cars. *See* Ex. 13. According to UP's data, the railroad provided late service for █ cars and entirely missed service for █ cars, for a total of █ of █ cars with improper service. *Id.* Accordingly, UP's service percentage by volume for this ten day stretch was approximately █. However, between Oct. 14, 2021 and Nov. 30, 2021, UP provided █ service for █ cars during this stretch. *Id.* Yet, averaging the on-time performance from Oct. 3 – Nov. 30, 2021 yields a rate of approximately █³. By normalizing the data over the longer

³ Between Oct. 3 and Nov. 30 2021, Sanimax ordered a total of █ cars. UP missed or was late in delivering █ total cars (all of which occurred between Oct. 3 and Oct. 13, 2021). Accordingly, UP correctly placed █ cars out of the █ order, leading to a █ on-time performance rate. *See* Ex. 13.

period, the on-time service percentage by number of cars obscures the failure cluster in the first week of October 2021. By contrast, Sanimax's methodology far more accurately captures the adverse impact of UP's service failures on Sanimax's day-to-day operations.

B. Even Union Pacific's [REDACTED] On Time Arrival Approach Does Not Satisfy UP's Common Carrier Obligation

In addition to the tendency of UP's averaging approach to obscure the deleterious impacts of UP's service failures, its admitted failure rate of approximately [REDACTED] standing alone, demonstrates that UP has not met its common carrier obligation to Sanimax. As discussed, Sanimax plays a vital role in the agri-food industry and supply chain, processing over [REDACTED] pounds of raw material a year. *See* Sanimax Opening Statement at 3-4. The nature of its work, the time sensitivity of the rendering process, and the volume of raw material Sanimax processes necessitate reliable outbound transportation service. *See id.* UP consistently fails at this. The service UP *actually delivers* is the true measure of its reliability, not what UP schedules.

Using UP's [REDACTED] on-time metric, the difference between scheduled service and the effective service (what is actually delivered) is stark. Assuming UP scheduled five-days-per-week service for Sanimax, UP will fail to serve Sanimax properly, on average, at least one of those days each week, effectively providing four days of service. It is this reality – UP's effective performance – that the Board should evaluate in the common carrier obligation analysis.

Providing improper service on approximately [REDACTED] of its railcars falls short of UP's own performance goals for Sanimax, as the evidence of record demonstrates that UP's own goal is to provide [REDACTED] on-time performance to Sanimax's South St. Paul facility. *See* Sanimax Opening Statement at Ex. 6. Since August 2020 through February 2022 (a total of 18 months), UP has

achieved this goal in just [REDACTED]. See UP Reply at Ex. 2. UP is not satisfying its common carrier obligations when it is not even living up to its own performance expectations.⁴

As discussed above, reliance on UP's claimed [REDACTED] average on time arrival figure obscures the effects UP's inconsistent service imposes on the South St. Paul facility. In addition to the October 2021 example above, UP's data shows that in February 2022, UP provided only [REDACTED] on-time performance, failing to provide at least [REDACTED] railcars during the month. See UP Reply at Ex. 2. Sanimax needs consistent rail service to fulfill its obligations as a key member of the region's agri-food supply chain. With just three-days-per-week of scheduled service, Sanimax will effectively receive 2.4 days of proper service. This low level of effective service forces Sanimax to bear significant operational risks, particularly when these foreseeable failures cluster together, as UP's service history demonstrates will happen.⁵

UP's offer to provide special switches to make up for its failures similarly fails to account for UP's effective performance. UP argues that Sanimax "may request special switches in the event there is a serious issue or if additional service is needed" and that UP "has provided Sanimax with special switches." UP Reply at 7, 11. Indeed, Sanimax *has requested* special switches from UP on numerous occasions – but most requests go ignored by UP. In a review of [REDACTED] requests by Sanimax for additional switches to recover service failures, UP confirmed that it would provide service just [REDACTED] times. See Ex. 15, Third Verified Statement of Todd Strickler at ¶¶5-6. Tellingly,

⁴ Success no more than [REDACTED] of the time is also inconsistent with the 100% on-time performance that UP expects of its own suppliers. See Union Pacific Railroad Supplier Excellence Manual (Oct. 15, 2020) § 3.1 (page 6) ("The Strategic Sourcing Group's screening process is based on several factors including the examples below: Supplier's current delivery performance *based on 100% on-time expectation...*") (emphasis added), online at https://www.up.com/cs/groups/public/@uprr/@suppliers/documents/up_pdf_nativedocs/wcccon1059797.pdf.

⁵ See *supra* §II.A at 4-5.

among these ■ special switches, ■. *Id.*

In practice, special switches have not and will not make up for UP's inconsistent service and its failure to fulfill its common carrier obligations.

Finally, externalities faced by UP should not excuse its service failures to Sanimax. UP argues, without supporting evidence, that "externalities and variables outside of [its] control" excuse its service delays and disruptions. UP Reply at 15-16. To be sure, the individual occurrence of one of these exogenous events is not predictable; however, the occurrence of such events in the aggregate is foreseeable and known to UP. Ironically, UP encourages Sanimax to "consider ways in which it can build resiliency into its operating model," while shrugging off the foreseeable "externalities and variables" that "inevitably result in service variability, delays, and disruptions" in its rail service. UP Reply at 16. Because these externalities and variables are foreseeable in the aggregate, UP's common carrier obligations should require it to accommodate the reasonable request of Sanimax by scheduling service that accounts for the difference between UP's scheduled and effective service. Accordingly, these predictable externalities should not excuse UP's service performance.

C. UP's Description of Sanimax's Railcar Utilization Is Incomplete

UP's reliance on Sanimax's utilization of its services is incomplete because it does not show the impact of UP's service failures on Sanimax. UP argues that Sanimax's average volume of ■ carloads per week does not justify five-days-per-week service. *See* UP Reply at 1. UP's reliance on this figure is misleading for two reasons. First, UP cherry-picks the ■ average carloads per week figure based on less than three months of data. *See id.* at Ex. 3 (showing ■ average carloads per week from just January 2 through March 5, 2022). In contrast, Sanimax's

outbound shipping data shows an average of [REDACTED] carloads per week through all of 2021.⁶ *See* Sanimax Opening Statement at Ex. 12. Sanimax’s utilization is higher over time than what UP’s short-term figure shows.

Second, UP’s calculation of Sanimax’s utilization ignores the realities of UP’s missed service. Sanimax would like to utilize effective and consistent rail transportation for its finished goods. And Sanimax has made substantial investments in rail infrastructure at the South St. Paul facility in reliance on receiving consistent service. *See* Sanimax Opening Statement at 16. Inconsistent and missed service by UP, however, constrains Sanimax’s ability to utilize rail transportation fully. Thus, UP’s carloads per week figure is not an accurate measure of Sanimax’s ability, and desire, to utilize effective and consistent rail transportation.

D. UP’s “Network” Obligations Are Not Relevant and Are Unsupported by the Evidence

UP’s arguments concerning its obligations to other customers are unsupported by evidence and not relevant to this proceeding. As additional justification for its failures, UP asserts that it changed “Sanimax’s service schedule for the sake of increasing the efficiency of its network for the benefit of all its customers, including Sanimax.” UP Reply at 12. UP also refers to other customers with higher volumes than Sanimax. *See id.* at 5. UP’s reliance on its network is not justified for two reasons.

First, there is no evidence in the record about the volumes of other customers or UP’s need to optimize its system-wide services. UP’s Reply does not cite to a single exhibit or other item of evidence in support of these generalized claims. UP argues, “[T]he Board’s fact-specific inquiry

⁶ The shipping data shows Sanimax utilized “UNION PACIFIC USD” as its carrier on [REDACTED] occasions in 2021. Dividing this figure by 52 weeks in the year equals an average of [REDACTED] outgoing carloads per week in 2021.

must . . . be based on the evidence in the record.” UP Reply at 14. Sanimax agrees. Without evidence to support UP’s claims, the Board must disregard UP’s arguments here.

Second, UP *itself* has stated that evidence about its other customers *is not relevant to this proceeding*. In response to Sanimax’s first set of requests for the production of documents to UP, UP objected to numerous discovery requests concerning UP’s overall system, claiming that “information about other UP customers are not reasonably calculated to lead to the discovery of admissible evidence in this proceeding.” *See* Ex. 14, UP’s Responses to Sanimax’s First Set of Requests for Production of Documents at 3. UP now seeks to support its case with the very information UP contended was so irrelevant that it was *not even a proper subject of discovery*.⁷ The Board should categorically reject UP’s attempt to now rely on evidence UP previously contended was irrelevant to this proceeding and refused to provide in discovery. Consistent with UP’s stance in discovery, the Board should find that UP’s obligations to other customers – in other words, to its “network” – are not relevant to the question of whether UP has satisfied its common carrier obligations to Sanimax.

III. REBUTTAL LEGAL ARGUMENT

As confirmed in the case law cited by both parties, whether UP has satisfied its legal obligation to Sanimax to provide adequate service on reasonable request requires a “case-by-case,” “fact-specific” inquiry.⁸ *See Savannah Port Terminal R.R., Inc. – Pet. for Decl. Order*, FD 34920, slip op. at 8 (STB served May 30, 2008), cited in UP Reply at 3 n.8 and elsewhere (“there is no set rule” under 49 U.S.C. § 11101 on how many switches a rail carrier must provide; it depends on

⁷ For example, if UP believes that its system-wide efficiency is relevant to this proceeding, it should have produced records in response to, at a minimum, Document Requests No. 1, 9 or 10.

⁸ *Granite State Concrete Co., Inc. v. Surface Trans. Bd.*, 417 F.3d 85, 92 (1st Cir. 2005); *see also GS Roofing Prods. Co. v. Surface Trans. Bd.*, 143 F.3d 387, 392 (8th Cir. 1998) (same).

“what is reasonable under the circumstances”); *Meyer v. N. Coast R.R. Auth.*, FD 34337, slip op. at 4 (STB served Jan. 31, 2007), cited in UP Reply at 4 n.10 and elsewhere (describing facts supporting a “reasonable request” for switching at a customer’s plant).

In this case, Sanimax has made the necessary factual showing, in its Complaint and in its Opening Statement, to justify a Board order directing UP to increase its scheduled service at South St. Paul back to five-days-per-week. The above cases support Sanimax’s case. *Savannah Port Terminal* confirms that the common carrier obligation under 49 U.S.C. § 11101 specifically “includes dropping off ... and picking up ... cars” – that is, in-plant switching of the kind Sanimax requires from UP. *Savannah Port Terminal*, slip op. at 8. In that case, while the Board denied the shipper’s demand for more daily switches, the denial was due to restrictions on the railroad’s switching that did not reflect inadequate service by the railroad but rather “the inadequacy of [the customer’s] track.” *Id.* at 9. In the instant case, by contrast, Sanimax’s rail infrastructure at South St. Paul is fully adequate to support (and long *did* support) a five-days-per-week service schedule from UP. In fact, Sanimax continues to invest in its rail facilities to ensure the longevity of its rail operations.⁹ The problem in Sanimax’s case is not the lack of available shipper infrastructure but rather “inadequate service by the railroad,” to use the language of *Savannah Port Terminal*. *Id.* at 9. The problem can be resolved by a Board order to UP to provide adequate (five-days-per-week) service.¹⁰

⁹ Sanimax Opening Statement at 13, describing and citing the evidence for Sanimax’s investments in its rail loading facilities made in reliance on UP’s service.

¹⁰ *Savannah Port Terminal*, slip op. at 8, also notes that the Board and its predecessor agency the Interstate Commerce Commission have not typically ordered more than one switch per day for a given customer. Sanimax is not seeking more than one switch per day from UP at South St. Paul. Rather, what Sanimax requires is *more days of service* from UP.

The *Meyer* case cited by UP helps to flesh out the “reasonable request” component of the common carrier requirement to provide adequate rail service on reasonable request. “A reasonable request is one that is specific as to the volume, commodity and time of shipment.” *Meyer v. N. Coast R.R. Auth.*, *supra*, FD 34337, slip op. at 4 (STB served Jan. 31, 2007). In contrast to the unsuccessful complaining party in *Meyer*, Sanimax has clearly specified, and UP fully knows, the volume of Sanimax’s outbound shipments, the rendered commodities being shipped, and when Sanimax requires the service. Thus, the conditions under 49 U.S.C. § 11101 are satisfied for the Board to order UP to restart the five-days-per-week service schedule that – in light of UP’s practice of providing less than the fully scheduled service – would be adequate in Sanimax’s situation.

Sanimax agrees with UP that the instant case provides an instructive contrast with *De Bruce Grain, Inc. v. Union Pacific R.R. Co.*, STB Docket No. 42023 (STB served Dec. 22, 1997) – but for reasons opposite to those suggested by UP. (*See* UP Reply at 3 n.8, 9, 17.) UP asserts that Sanimax’s transportation needs must give way to the needs of UP’s overall network. UP’s Reply, however, provides no facts to demonstrate why other shippers require prioritization to the detriment of Sanimax, and as discussed above, UP refused to provide such evidence in discovery. UP’s network is nothing more than an offstage abstraction in the UP Reply, which UP says takes precedence over Sanimax for unexplained reasons.

In *De Bruce Grain*, the Board denied relief to an individual customer seeking enhanced access to railcars from the carrier, because doing so would give that customer’s shipments “priority over other shipments,” which “is not in the public interest.” *De Bruce Grain, supra*, STB Docket No. 42023, slip op. at 4 (STB served Dec. 22, 1997). *But in that case there was a detailed, fully supported factual basis for the Board’s denial of relief.* The Board had independently investigated and found “serious rail service problems ... in the western United States,” based on “written submissions and oral presentations” from “hundreds of shippers” at two oral hearings. *Id.* The

Board had already ordered railroads and shippers to meet and devise “an appropriate prioritization program” to address the western U.S. rail service crisis. *Id.* That is why a broad network-wide rail service resolution precluded accommodating an individual customer.¹¹

In this case, in contrast, UP has intentionally provided no evidence of network or systemic problems precluding adequate service to Sanimax. *See* Ex. 14 (objecting to discovery on grounds that “information about other UP customers are not reasonably calculated to lead to the discovery of admissible evidence in this proceeding”). It asks the Board simply to assume that an abstraction – UP’s network – must take priority here. That is not appropriate. Sanimax has made a detailed factual showing of the inadequate rail service currently provided by UP in response to Sanimax’s reasonable requests, sufficient to carry Sanimax’s burden of proof for the Board to order UP to provide five-days-per-week service at South St. Paul. UP’s vague hand-waves toward its network cannot rebut Sanimax’s factual showing.

Moreover, in sharp contrast to the industry situation in *De Bruce*, the current industry wide-problems have been self-created by the railroads to increase profits, as the Board Chairman has noted:

“During my time on the Board, I have raised concerns about *the primacy Class I railroads have placed on lowering their operating ratios and satisfying their shareholders even at the cost of their customers.* Part of that strategy has involved cutting their work force to the bare bones in order to reduce costs. Over the last 6 years, the Class Is collectively have reduced their work force by 29% – that is about 45,000 employees cut from the payrolls. In my view, all of this has directly contributed to *where we are today – rail users experiencing serious deteriorations in rail service because, on*

¹¹ More detail on the western U.S. rail service crisis discussed in *De Bruce Grain* and the Board’s findings and orders in that respect are in the Board’s several reported decisions in *Joint Petition for Service Order*, STB Service Order No. 1518, 3 S.T.B. 44 (served Feb. 28, 1998), 3 S.T.B. 28 (served Feb. 17, 1998), 2 S.T.B. 744 (served Dec. 4, 1997), 2 S.T.B. 725 (served Oct. 31, 1997).

too many parts of their networks, the railroads simply do not have a sufficient number of employees.”¹²

Thus, even had UP presented evidence of network problems, which it has not, the Board should not permit a rail carrier to first self-create a network problem designed to increase profits, and then use that crisis as a basis to violate its common carrier obligation to shippers. Such a result would effectively negate the common carrier obligation by subordinating it to the rail carrier’s self-interested operational and profit-driven decisions, which is precisely the opposite of the common carrier obligation.

IV. CONCLUSION

The record demonstrates UP has not satisfied its common carrier obligations to Sanimax. While UP schedules service three-days-per-week, it actually fails to provide proper service on such a schedule. Accordingly, the Board should order UP to return to the scheduled five days of rail service each week at the South St. Paul facility to help assure that, in practice, Sanimax obtains rail service sufficient for the reasonable needs of its supply chain critical business.

¹² Surface Transportation Board Press Release, *STB Issues Hearing Notice for Urgent Issues in Freight Rail Service* (Apr. 7, 2022), www.stb.gov/news-communications/latest-news/pr-22-21/, quoting Board Chairman Martin Oberman (emphasis added).

Respectfully submitted,

Date filed: April 18, 2022

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PUBLIC VERSION

CERTIFICATE OF SERVICE

I hereby certify that on April 18, 2022, the foregoing Sanimax USA LLC's Rebuttal Statement was served by email and first class mail on Union Pacific's attorneys and on the Association of American Railroads (Public version only) at the following addresses:

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Exhibit 13

**Exhibit Withheld as
Containing Confidential
Information**

Exhibit 14

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

SANIMAX USA LLC, v. UNION PACIFIC RAILROAD COMPANY	STB Docket No. NOR 42171
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**UNION PACIFIC RAILROAD COMPANY'S RESPONSES
TO SANIMAX USA LLC'S FIRST SET OF REQUESTS
FOR PRODUCTION OF DOCUMENTS**

Pursuant to 49 C.F.R. Part 1114 and other applicable rules and authority, Union Pacific Railroad Company ("UP"), through undersigned counsel, responds as follows to Sanimax USA LLC's ("Sanimax") First Set of Requests for Production of Documents. UP reserves the right to supplement or amend these Responses and Objections as circumstances may require.

GENERAL OBJECTIONS

UP's General Objections, as set forth herein, are to be considered objections to each of the specific Requests for Production (including subparts) that follow. UP's objections shall not waive or prejudice any objections that it may later assert.

1. UP objects to any and all definitions and/or instructions to the extent the definitions and/or instructions either seek to expand upon or conflict with 49 C.F.R. Part 1114, Subpart B. Further, UP objects to these Requests for Production to the extent they seek to impose obligations on UP that are greater than or otherwise inconsistent with those imposed under 49 C.F.R. Part 1114, Subpart B.

2. UP objects to each and every Request for Production to the extent it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privilege, exemption, or protection from discovery or disclosure. In the event any such information is inadvertently produced or provided, and such information is the proper subject of the attorney-client privilege, the attorney work-product doctrine, and/or any other applicable privilege, exemption, or protection, such disclosure is not to be construed as a waiver of any of these privileges, exemptions, or protections. UP reserves the right to demand that such inadvertently produced privileged information be returned to it and that all copies in Sanimax's possession, and that of its counsel, consultants, subsidiaries, or other agents, be destroyed.

3. UP objects to each and every Request for Production that requests documents, communications, or information that is already in the possession of Sanimax or that is readily available or accessible to Sanimax.

4. UP does not concede the relevance, materiality, competency, or admissibility as evidence of documents or information requested in the Requests for Production or the Responses or productions thereto provided by UP. UP reserves its right to object on any ground to the use of the responses herein, or its related productions, in this proceeding or in any subsequent appeal, proceeding, action, or trial.

5. UP objects to the Requests for Production to the extent that they seek information about UP rail service to Sanimax prior to November 2, 2021. Such rail service is exempt from STB regulation and outside the scope of this proceeding. The only issue in this proceeding is whether rail service that occurred after the STB partially revoked applicable exemptions in its November 2, 2021, decision comported with the requirements of the Interstate Commerce Act.

6. UP objects to any Requests for Production that request information related to UP customers other than Sanimax as irrelevant, overbroad, and overly burdensome. The only issue in this proceeding is whether UP rail service to Sanimax that occurred after the STB partially revoked applicable exemptions in its November 2, 2021, decision comported with the requirements of the Interstate Commerce Act. Discovery requests seeking information about other UP customers are not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Even if information on other customers had some marginal relevance to this proceeding, that relevance would be far outweighed by the burden of producing such information.

SPECIFIC OBJECTIONS AND RESPONSES

In addition to its General Objections (which apply in full to each and every Request for Production, without further enumeration), below UP sets forth Specific Objections and Responses to each Request for Production. UP preserves all of its General Objections set forth above, and none of the following Specific Objections shall waive its General Objections. Nor shall any of UP's Specific Objections limit the scope, breadth, generality, or applicability of those General Objections.

Request No. 1

Documents and Things referring or relating to Your decision to modify Your rail transportation service to Sanimax to provide three service days per week, including, but not limited to, Documents and Things relating to your discussion, rationale, strategy, or justification for the modification of Your rail transportation service to Sanimax.

Response: Subject to and without waiving the General Objections, UP is producing non-privileged documents that are responsive to this Request to the extent they can be identified in a reasonable search.

Request No. 2

Documents and Things sufficient to show Your guidelines, policies, procedures, rules, and regulations relating to Your processes for handling, answering, or resolving Customer complaints, whether formally or informally.

Response: UP objects to this Request as overbroad to the extent that it requests information regarding UP customers other than Sanimax. The only issue in this proceeding is whether UP rail service to Sanimax that occurred after the STB partially revoked applicable exemptions in its November 2, 2021, decision comported with the requirements of the Interstate Commerce Act. Discovery requests seeking information about other UP customers are not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to and without waiving this objection or the General Objections, UP does not have any written policies or rules applicable to Sanimax that are responsive to this Request.

Request No. 3

Documents and Things sufficient to show Your guidelines, policies, procedures, rules, and regulations relating to Your determination of reasonable and adequate rail transportation service to Customers and/or prospective Customers.

Response: UP objects to this Request as overbroad to the extent that it requests information regarding UP customers other than Sanimax. The only issue in this proceeding is whether UP rail service to Sanimax that occurred after the STB partially revoked applicable exemptions in its November 2, 2021, decision comported with the requirements of the Interstate Commerce Act. Discovery requests seeking information about other UP customers are not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. UP further objects to the vague and undefined term “reasonable and adequate rail service,” and objects to the extent that this Request calls for a legal conclusion.

Subject to and without waiving these objections or the General Objections, UP does not have any written policies or rules applicable to Sanimax that are responsive to this Request.

Request No. 4

Documents and Things sufficient to show Your guidelines, policies, procedures, rules, and regulations relating to Your ability to modify or change the rail transportation service You provide to Customers.

Response: UP objects to this Request as overbroad to the extent that it requests information regarding UP customers other than Sanimax.. The only issue in this proceeding is whether UP rail service to Sanimax that occurred after the STB partially revoked applicable exemptions in its November 2, 2021, decision comported with the requirements of the Interstate Commerce Act. Discovery requests seeking information about other UP customers are not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to and without waiving this objection or the General Objections, UP is producing non-privileged documents that would apply to Sanimax and are responsive to this Request to the extent they can be identified in a reasonable search.

Request No. 5

Documents and Things sufficient to show Your guidelines, policies, procedures, rules, and regulations relating to Your allocation of rail transportation service between Customers that contract with You, Customers that use common carrier service terms, and Customers that use You to transport commodities exempted from regulation, as understood under 49 U.S.C. § 10502.

Response: UP objects to this Request as overbroad to the extent that it requests information regarding UP customers other than Sanimax. The only issue in this proceeding is whether UP rail service to Sanimax that occurred after the

STB partially revoked applicable exemptions in its November 2, 2021, decision comported with the requirements of the Interstate Commerce Act. Discovery requests seeking information about other UP customers are not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to and without waiving this objection or the General Objections, UP does not have any such guidelines, policies, procedures, rules, or regulations described in this Request. UP does not determine the “allocation of rail transportation service” based on whether the underlying transportation is provided pursuant to a rail transportation contract or a common carrier rate or whether the commodity is exempt from STB regulation.

Request No. 6

Documents and Things referring or relating to any analysis, reports, evaluations, memoranda, or studies You, or anyone on Your behalf, has conducted or completed relating to Your market power, market shares, and/or competitors in United States and in the Relevant Market.

Response: UP objects to this Request on the grounds that it is overbroad, unduly burdensome, and irrelevant to any issue in this proceeding. The only issue in this proceeding is whether UP rail service to Sanimax that occurred after the STB partially revoked applicable exemptions in its November 2, 2021, decision comported with the requirements of the Interstate Commerce Act. UP also objects to the extent that documents related to UP’s market power, market share, and competitors are privileged.

Request No. 7

Documents and Things sufficient to show Your guidelines, policies, procedures, rules, and regulations relating to Your calculation of the facility utilization rate of Your Customers or prospective Customers.

Response: UP objects to this Request as overbroad to the extent that it requests information regarding UP customers other than Sanimax. The only issue in this proceeding is whether UP rail service to Sanimax that occurred after the STB partially revoked applicable exemptions in its November 2, 2021, decision comported with the requirements of the Interstate Commerce Act. Discovery requests seeking information about other UP customers are not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to and without waiving this objection or the General Objections, UP is producing non-privileged documents that would apply to Sanimax and are responsive to this Request to the extent they can be identified in a reasonable search.

Request No. 8

Documents and Things referring or relating to Your calculation of Sanimax's facility utilization rate.

Response: Subject to and without waiving the General Objections, UP will produce non-privileged documents that are responsive to this Request to the extent they can be identified in a reasonable search.

Request No. 9

Documents and Things referring or relating to the reliability of Your rail transportation service to Customers with respect to timelines of schedule rail

switches and accuracy of rail car placement in the Relevant Market throughout the Relevant Period.

Response: UP objects to this Request as overbroad to the extent that it requests information regarding UP customers other than Sanimax. The only issue in this proceeding is whether UP rail service to Sanimax that occurred after the STB partially revoked applicable exemptions in its November 2, 2021, decision comported with the requirements of the Interstate Commerce Act. Discovery requests seeking information about other UP customers are not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to and without waiving this objection or the General Objections, UP is producing non-privileged documents that would apply to Sanimax and are responsive to this Request to the extent they can be identified in a reasonable search.

Request No. 10

Documents and Things referring or relating [to] Customers for which You changed the schedule service days and/or number of regularly scheduled switches based on its facility utilization rate.

Response: UP objects to this Request as overbroad to the extent that it requests information regarding UP customers other than Sanimax. The only issue in this proceeding is whether UP rail service to Sanimax that occurred after the STB partially revoked applicable exemptions in its November 2, 2021, decision comported with the requirements of the Interstate Commerce Act. Discovery requests seeking information about other UP customers are not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to and without waiving this objection or the General Objections, UP is producing non-privileged documents that would apply to Sanimax and are responsive to this Request to the extent they can be identified in a reasonable search.

Request No. 11

Documents and Things sufficient to show Your guidelines, policies, procedures, rules, and regulations for generating, maintaining, and disposing of Your records.

Response: UP objects to this Request to the extent it requests information regarding records unrelated to Sanimax on the grounds that it is overbroad, unduly burdensome, and irrelevant to the issues in this proceeding. Subject to and without waiving these objections or the General Objections, UP is producing non-privileged documents that would apply to Sanimax and are responsive to this Request to the extent they can be identified in a reasonable search.

Respectfully submitted,

/s/ Matthew J. Warren

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Counsel for Union Pacific Railroad Company

Dated: January 12, 2022

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of January 2022, I served a copy of the foregoing Responses to Sanimax's First Set of Requests for Production of Documents by email on the below counsel for Sanimax USA LLC.

Richard F. Riley, Jr.
David T. Ralston, Jr.
R. Nicholas Englund
Foley & Lardner LLP
Washington Harbour
3000 K Street, N.W., Suite 600
Washington, D.C. 20007-5109

/s/ Morgan B. Lindsay
Morgan B. Lindsay
SIDLEY AUSTIN LLP

Exhibit 15

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

THIRD VERIFIED STATEMENT OF TODD STRICKLER

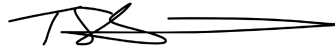
I, Todd Strickler, verify under the laws of the United States the following:

1. I am a certified logistics professional and have served as the Manager of Customs Compliance and Logistics for Sanimax LLC and all of its Affiliates since 2006. My office is located in Guelph, Ontario, Canada.
2. My duties include supervising Sanimax's logistics for North America, including logistics for Sanimax LLC USA. My role includes, but is not limited to, overseeing the logistics budget, sourcing carriers, and strategic planning for the movement of goods, both raw materials and finished products, by all modes of transportation, truck, rail, and ocean. A staff of six professional team members report to me.
3. Sanimax LLC USA operates a facility in the City of South St. Paul, Minnesota located at 505 Hardman Avenue South, South St. Paul, Minnesota 55075.

4. The Union Pacific Railroad Company services the South St. Paul facility. Sanimax is able to request special switches from Union Pacific to recover from missed or improper service by Union Pacific.
5. Sanimax has, at least, made [REDACTED] requests of Union Pacific for special switches since January 1, 2021.
6. Of those [REDACTED] requests, Sanimax has record of Union Pacific fulfilling Sanimax's requests for special switches on just [REDACTED] occasions. And of those [REDACTED] switches, Union Pacific [REDACTED]
[REDACTED].

In accordance with 49 C.F.R. § 1104.5, I, Todd Strickler, verify under the laws of the United States of America that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.

Executed: April 15, 2022



Todd Strickler
Manager, Customs Compliance and Logistics
Sanimax LLC and all of its Affiliates