



March 31, 2009

Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

**Attention: STB Finance Docket No. 35219
Union Pacific Railroad Company – Petition for Declaratory Order**

These comments respond to the notice published in the March 13, 2009 issue of the *Federal Register* instituting a declaratory order proceeding on the petition of the Union Pacific Railroad Company. Union Pacific (UP) has requested that the Surface Transportation Board determine the extent of the common carrier obligation to quote rates for the movement of chlorine over long distances, when chlorine supplies are available from closer sources. The National Association of Chemical Distributors (NACD) appreciates the opportunity to file these comments in opposition to UP's petition.

The National Association of Chemical Distributors (NACD), established in 1971, is an international association of chemical distributor companies that purchase and take title of chemical products from manufacturers. Member companies process, formulate, blend, re-package, warehouse, transport, and market these chemical products exclusively for an industrial customer base of approximately 750,000. NACD's nearly 250 distributor members are located in every region of the country, operate more than 1,535 chemical distribution facilities, and employ more than 21,300 employees. Hazardous materials transportation is an integral part of the chemical distribution business. In 2007, NACD members made 5.3 million chemical distribution shipments, were responsible for 71.7 billion pounds of delivered product, and drove 175 million miles while distributing chemicals.

As demonstrated through the Association's participation in STB Ex Parte 677 last year, NACD strongly believes that the railroads' common carrier obligation to transport hazardous materials should be maintained. Chemical distributors and manufacturers depend on rail service to send and receive shipments of certain hazardous materials as safely as possible.

For some materials, including toxic inhalation hazards (TIH) such as chlorine and anhydrous ammonia, rail is the safest and most efficient mode of transportation because of the large volume capacity of rail cars and a strong rail safety record. A single rail car can hold the same volume as between four and eight tank trucks. If rail service were to become unavailable because of limits on the railroads' common carrier obligation, transportation of these materials would be shifted to truck, which would not only cause major delays, but would also increase the cost of transportation, the opportunity for loading and unloading incidents, and the volume of hazardous materials on the nation's highways.

On a large scale, the well-being of the United States economy and health of its citizens depends on rail transportation of TIH materials. For example, not only is chlorine essential to treat water for safe drinking, it is also a basic material needed to produce thousands of products people need ranging from pharmaceuticals to computer chips to everyday household items. Another example is ammonia, which is necessary not only to grow food but also for the refrigeration needed to safely store and transport food products. Ammonia is also a critical material power plants use to reduce their emissions, minimize pollution, and even operate within their air permit limits.

Because TIH materials are building blocks for so many products that are essential to Americans' health and well-being, the economic impact of a lack of rail service to transport these materials would be severe. Shifting the transportation of these products to truck would result in the need for more personnel to safely load and unload the products and to drive the tank trucks. It would also require more fuel for all of the additional trucks on the road and lead to more congestion on the nation's highways.

The UP petition to limit, or provide an exception to, their obligation to transport chlorine in this particular case is a threat to the entire common carrier obligation to transport TIH materials. If the STB were to allow UP to deny service to the customer in this case, it would set a precedent for many additional grants of service denials in the future, which would ultimately make the common carrier obligation meaningless. The common carrier obligation exists for the specific purpose of requiring the railroads to provide service to shippers when they would otherwise choose not to do so because it would be unprofitable or inconvenient. Given the monopolies that the major railroads enjoy in many areas, the common carrier obligation is the only recourse that shippers have to ensure they are able to receive the rail service they need to safely and efficiently transport their products, particularly hazardous materials.

The STB should also deny the UP petition because granting it would cause major market disruptions, beginning with this case and continuing with many others in the future. In this case, UP claims that it should not be required to transport chlorine over the requested long distance route for the customer because ample supplies of chlorine are located much closer to the destinations in Louisiana and Texas. While chlorine is produced in the Gulf Coast region, it is not nearly enough to meet all of the needs of the customers in that area, ranging from manufacturing of numerous types of industrial and consumer products to water treatment. In fact, the Gulf Coast region routinely needs chlorine from other parts of the country and even Canada to meet demand. If the STB were to grant the UP's petition in this case, it would open the door for additional rail carriers to seek similar grants to deny service to customers shipping

chlorine, or other materials such as ammonia, over a long distance to this area, as well as other areas.

One consequence of such a service denial would be to force shippers to begin transporting these products by truck, which, as previously stated, is not as safe nor as efficient as rail for transporting TIH materials. Another consequence would be a lack of supply in the area, which would incentivize the chlorine manufacturers to raise prices and establish their own monopolies. It would be unacceptable for the STB, through a grant of UP's service denial request, to allow the railroad and the agency itself to control supply and demand to such an extent. The ultimate losers in this and future cases would be the economy and consumers, who would experience substantial shortages and price increases.

The UP also claims that they should be granted an exception to their common carrier obligation to transport chlorine because the railroads are being pressured by other government agencies to find ways to reduce risk in the transportation of TIH materials and that not carrying these materials over a long distance is a way to reduce this risk. Congress has delegated the role of ensuring that hazardous materials are transported safely and securely to the U.S. Department of Transportation and the U.S. Department of Homeland Security, not the STB. In fact, both DOT and DHS have taken many steps in recent years to enhance the safety and security of the transportation of hazardous materials by rail, particularly TIH materials. None of these measures have included placing limits on the transportation of TIH materials by rail over long distances.

The UP petition is the latest in a series of actions the railroads have taken in recent years to be relieved of their common carrier obligation to transport TIH materials. It is critical to the chemical and other industries, consumers, and the economy as a whole, for the common carrier obligation to be maintained in its entirety. If the UP petition is granted, the result would be a threat to the continuation of the common carrier obligation; a shift from rail to truck transportation of chlorine, increasing the opportunity for incidents; and major marketplace disruptions. Therefore, NACD strongly urges the STB to deny the UP petition.

NACD appreciates the opportunity to comment on this important case and again urges the federal government to fully maintain the railroads' common carrier obligation that is so essential to the safe transport of materials that all Americans need for their health and well being.

Sincerely,

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