

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35219

UNION PACIFIC RAILROAD COMPANY—
PETITION FOR DECLARATORY ORDER

AGENCY: Surface Transportation Board.

ACTION: Institution of declaratory order proceeding; request for comments.

SUMMARY: In response to a petition filed by Union Pacific Railroad Company (UP) on February 18, 2009, the Board is instituting a declaratory order proceeding under 49 U.S.C. 721 and 5 U.S.C. 554(e).¹ UP requests that the Board determine the extent of the common carrier obligation to quote rates for new, lengthy movements of chlorine, a toxic inhalation hazard (TIH), where the transportation would require movement through High Threat Urban Areas (HTUAs)² and other large communities to destinations where, according to UP, an ample supply of chlorine is available from nearby sources. The Board seeks public comment on this matter.

DATES: Replies to UP's petition and comments are due by March 31, 2009. UP's rebuttal and reply to comments are due by April 20, 2009.

ADDRESSES: Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's website, at <http://www.stb.dot.gov>. Any person submitting a filing in the traditional paper format should send an original and 10 copies, referring to STB Finance Docket No. 35219, to: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, send one copy of comments to UP's representative, Tonya W. Conley, Union Pacific Railroad Company, 1400 Douglas Street, Omaha, NE 68179.

Copies of written comments will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's website.

¹ By a separate decision served today, the Board issued a protective order in this proceeding.

² As UP refers to them, HTUAs are defined by the Transportation Security Administration (TSA) at 49 CFR 1580.3.

FOR FURTHER INFORMATION CONTACT: Timothy Strafford, (202) 245-0356.
[Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: 1-800-877-8339].

SUPPLEMENTAL INFORMATION: UP, as a rail common carrier, has an obligation under 49 U.S.C. 11101(b) to provide common carrier rates and other service terms upon reasonable request. UP's petition for declaratory order seeks to address a recent request from a customer for common carriage rates for the transportation of chlorine from Utah to destinations in or near Houston and Dallas, TX, and Allemania and Plaquemine, LA. These movements would average 1,900 miles in distance and travel through two HTUAs and several other large cities. UP declined to quote rates for these movements, pending the outcome of this proceeding, because, according to UP, the risk of potential exposure from long distance shipments of chlorine is unnecessary where all four of these destinations are located less than 300 miles from ample alternate chlorine supplies. UP asserts that the facilities in both Allemania and Plaquemine have alternate chlorine sources accessible by rail within 70 miles, none of which will route through any HTUAs, and that the facilities in Houston and Dallas have alternative chlorine sources within 300 miles, with potential sources located in the Houston metropolitan area. UP also asserts that other governmental agencies have requested that it find ways to reduce TIH shipments in order to reduce TIH transportation risks.

On July 22, 2008, the Board held a public hearing in STB Ex Parte 677 (Sub-No. 1) to examine issues related to the common carrier obligation of railroads with respect to the transportation of hazardous materials. Comments were filed in that proceeding by the railroads (including UP) and TIH shippers. Many of the comments touched on the issues that are likely to arise in this proceeding. Thus, the parties that participated in STB Ex Parte 677 (Sub-No. 1) may have an interest in the issues raised in this proceeding.

Under 5 U.S.C. 554(e), the Board has discretionary authority to issue a declaratory order to terminate a controversy or remove uncertainty. A declaratory order proceeding is thus instituted in this proceeding to invite broad public comment. Any person seeking to comment on UP's petition may submit written comments to the Board regarding the extent of UP's common carrier obligation to quote rates for new, lengthy movements of chlorine, where the transportation would require movement through HTUAs and other large communities to destinations where an ample supply of chlorine may be available from nearby sources.

In its petition, UP urges the Board to consult with TSA and the Federal Railroad Administration (FRA) because UP suggests that a decision by the Board in this proceeding could conflict with TSA and FRA policies. Because the Board's consideration of the issues raised by UP's petition may relate to statutes and regulations governed by TSA, FRA, and other agencies, any agency with an interest in the outcome of these issues is encouraged to comment.

Board decisions, notices, and filings in this and other Board proceedings are available on our website at WWW.STB.DOT.GOV.

Decided: March 10, 2009.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary