

CLARK HILL

Justin J. Marks
T 202.772.0916
F 202.772.0930
Email: jmarks@ClarkHill.com

Clark Hill
1001 Pennsylvania Avenue NW
Suite 1300
Washington, DC 20004
T 202.772.0909
F 202.772.0919

clarkhill.com

August 14, 2020

300981

BY E-FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

ENTERED
Office of Proceedings
August 14, 2020
Part of
Public Record

Re: *Port of Benton, WA - Petition for Declaratory Order*, STB Docket No. 36426

Dear Ms. Brown:

Enclosed for filing in the above-referenced proceeding is a Petition for Declaratory Order on behalf of the Port of Benton (the "Port").

Fee Waiver Request. The Port is a public agency and political subdivision in the State of Washington chartered in 1958 under state statute RCW 53.04.010. The Port's purpose is to promote economic and industrial development along with multi-modal transportation. As part of that mandate, the Port acquired a line of railroad from the predecessor agency to the U.S. Department of Energy.

Although the Port owns this trackage, it does not provide rail service over it. Rather both BNSF Railway, Inc. and the Union Pacific Railroad have operating rights over the subject trackage. In addition, the Port leases the track to the Tri-City Railroad Company, LLC ("TCRY"), to provide service over its line. The Port submits this Petition for Declaratory Order seeking assistance to address disputes and resolve controversies that have arisen between shippers on the Port owned rail line and TCRY.

The Board's policy provides that the Board will waive or reduce a fee when the waiver is in the public interest, or when payment of the fee would impose an undue hardship on the requestor. 49 CFR §1002.2(e)(2)(ii). Here, waiving the \$1,400 fee is in the public interest because the Port is a public agency established under Washington law and a nonoperating railroad. Like many local government agencies, Port is under considerable pressure to control its costs. A waiver or reduction in Board fees would be in the public interest. **F I L E D**

FEE RECEIVED

August 14, 2020

SURFACE

TRANSPORTATION BOARD

August 14, 2020

SURFACE

TRANSPORTATION BOARD

August 14, 2020
Page 2

So as not to delay the handling of this Petition, the Port has paid the filing fee via pay.gov. Please let me know if there are any questions regarding this filing.

Respectfully,

A handwritten signature in blue ink, appearing to read "Justin J. Marks". The signature is fluid and cursive, with the first name "Justin" and last name "Marks" clearly distinguishable.

Justin J. Marks

Counsel for the Port of Benton

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36426

PORT OF BENTON, WA

PETITION FOR DECLARATORY ORDER

Eric M. Hocky
Clark Hill PLC
Two Commerce Square
2001 Market St.
Suite 2620
Philadelphia, PA 19103
(215) 640-8500
ehocky@clarkhill.com

Justin J. Marks
Clark Hill PLC
1001 Pennsylvania Ave. N.W.
Suite 1300 South
Washington, DC 20004
(202) 772-0916
jmarks@clarkhill.com

Attorneys for Port of Benton, WA

Dated: August 14, 2020

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36426

PORT OF BENTON, WA

PETITION FOR DECLARATORY ORDER

The Port of Benton, WA (the “Port”) hereby respectfully petitions the Board for a declaratory order pursuant to its discretionary authority under 5 U.S.C. §554(e) and 49 U.S.C. §1321 to address disputes and resolve controversies that have arisen between shippers on the Port owned rail line (the “Line”) and Tri-City Railroad Company, LLC (“TCRY”), the Port’s lessee / operator regarding the applicability of certain tariff supplements issued by TCRY. In support of the Petition, the Port is concurrently filing the Verified Statement of David Billetdeaux, in-house attorney with the Port (“Billetdeaux V.S.”).

BACKGROUND

1. **The Port and TCRY are parties to a Lease that governs TCRY’s use and maintenance of the Line.**

The Port and the TCRY are parties to a Lease of the Port-owned Line located in Washington state. A copy of the Lease is attached hereto as Appendix A. Pursuant to the Lease, TCRY provides rail service to certain shippers located along the Line and is responsible for maintaining the Line.

The Lease is subject to trackage rights agreements under which BNSF Railway Company (“BNSF”) and Union Pacific Railroad Company (“UP”) retain the right to provide rail service to shippers located along the Line. Based on the arrangements between BNSF and UP as the

builder and the Atomic Energy Commission (“AEC”, now the U.S. Department of Energy) as the original owner of the Line, BNSF and UP are not required to pay any additional compensation or maintenance costs for the current exercise of their respective trackage rights.

The history and background of the Line, the Lease, and the trackage rights agreements, and some of the disputes between TCRY and the Port are well known to the Board.¹ Many of the disputes relate to TCRY’s unsuccessful attempts to alter the arrangements with BNSF and UP to require them to make additional payments towards TCRY’s required maintenance of the Line.²

In the *TCRY Discontinuance Decision*, slip op. at 7, the Board granted the Port’s application for adverse discontinuance, finding that

The present or future public convenience and necessity require or permit the discontinuance of operations by Tri-City over the Line, and discontinuance of operations by Tri-City would not result in a serious, adverse impact on rural and community development.

In granting the adverse discontinuance, the Board allowed the Port to pursue its state court remedies to terminate the Lease and evict TCRY from the Line. *Id.*, slip op at 5. The Board also

¹ See *Port of Benton County, Wash. – Adverse Discontinuance of Rail Service – Tri-City Railroad Company, LLC*, AB 1270 (served Oct. 31, 2019) (“*TCRY Discontinuance Decision*”), slip op. at 2-3. See also, *Tri-City Railroad Company, LLC – Petition for Modification of Trackage Rights Agreement – Port of Benton County, Wash., BNSF Railway Company and Union Pacific Railroad Company*, Docket No. FD 36396 (served June 15, 2020) (granting TCRY request to withdraw petition).

² For example, in 2011, TCRY sought to impose additional trackage rights fees for maintenance of the leased lines on UP and BNSF. A federal district court found these fees to be improper under UP and BNSF’s trackage rights agreement. *BNSF Railway Co. v. Tri-City & Olympia R.R. Co. LLC*, 835 F. Supp. 2d 1056 (E. D. Wash. 2011) , order amended and superseded sub nom. *BNSF Ry. Co. v. Tri-City & Olympia R.R. Co. LLC*, No. CV-09-5062-EFS, 2012 WL 12951546 (E.D. Wash. Feb. 14, 2012). Most recently, TCRY filed a petition in FD 36396 to modify the TRA despite the fact that it is not a party to the trackage rights agreement, and despite the fact that the Lease, section 7.4, specifically prohibits TCRY from seeking such relief. The Port, BNSF and UP each filed Motions to Dismiss the petition, and TCRY voluntarily withdrew its petition.

confirmed that until there is a decision in state court evicting TCRY, TCRY can continue to operate under the Lease. *Id.*, slip op. at 6.

On March 17, 2020, the Port initiated the state law process for evicting TCRY from the Line by posting the required 30-day Notice that TCRY either cure the breach of the Lease or vacate the premises.³ On April 9, 2020, TCRY filed a complaint against the Port in Benton County Superior Court regarding breaches of the Lease. The Port anticipates filing its formal eviction complaint shortly, efforts to date having been impeded by general orders in Benton County Superior Court related to COVID-19. In the meantime, despite the continued litigation, the Port continues to comply with its obligations under the Lease.

2. Under the Lease, TCRY is required to obtain Port approval for the imposition of tariffs, and the Port is the initial arbiter of disputes over tariffs between shippers and TCRY.

Under the Lease, TCRY is required to obtain the Port's approval for the imposition of tariffs. The tariffs "shall be reasonable in light of the use of the railroad" and "shall be subject to the review and approval of the Port, to insure compliance with the Port's agreements with the United States."⁴ Thus, the Port's initial obligation is to review any proposed charges on this basis.

In addition, the Lease requires the Port to act as an initial arbiter of disputes between shippers and TCRY over any tariffs issued by TCRY and outlines a process for resolution of any such disputes. If any "user of the railroad" files a complaint with the Port concerning TCRY's "rates, tariffs or operations," the Port is to notify TCRY and attempt to resolve the complaint

³ See *Billetdeaux V. S.*, Exhibit 1, Port of Benton Notice to Comply or Vacate.

⁴ Appendix A, Section 7.1.

through negotiations.⁵ If the Port is unable to resolve a complaint that concerns a matter within the jurisdiction of the Board, the Lease provides that the Port will refer the matter to the Board.⁶

3. Disputes have arisen with respect to two tariffs proposed by TCRY.

As relevant to this Petition, TCRY has proposed two supplemental tariffs each of which seeks to assess a per car charge on all cars moved over the Line. Supplement 1 was originally proposed in August 2018, and Supplement 5 was proposed on June 8, 2020. Copies of Supplement 1 and Supplement 5 are attached hereto as Appendix B and Appendix C, respectively.

Supplement 1

Supplement 1 purports to assess a track maintenance charge of \$95.00 per car on all cars that enter TCRY at the Richland connection. Under General Application, Section F, the “responsible party is the entity subject to this Supplement 1 ...” The Port’s review of the charges in Supplement 1 was delayed by the various litigation between the parties regarding the Lease, mutual claims of breach, and the adverse discontinuance proceeding. On January 16, 2020, the Port advised TCRY that it found that the charges in Supplement 1 “were not patently unreasonable” and therefore were approved. The Port did not make any determination about what entities TCRY could assess the charges against, although it cautioned TCRY that the Port did not believe that TCRY could assess the charges against BNSF or UP given the prior federal court decision on the subject. TCRY initially invoiced the Port for charges under Supplement 1, sending four invoices totaling \$194,750.⁷ However, the Port rejected the invoices on the basis that the Port does not operate rail cars over the Line that the Port owns, and the Port did not see

⁵ Appendix A, Section 7.2.

⁶ Appendix A, Section 7.2.2.

⁷ Billetdeaux V.S., Exhibit 3.

any basis, contractual or otherwise, that would obligate the Port to pay the TCRY invoices.⁸ In connection with its review of Supplement 5 discussed below, the Port has been advised by three shippers located on the Line, Preferred Freezer of Richland, LLC (“Preferred Freezer”), Central Washington Corn Processors (“CWCP”) and Lamb Weston, that TCRY has invoiced them for charges under Supplement 1,⁹ that they were not previously aware of the tariff, and that they disputed any liability for the charges. Preferred Freezer objects on the grounds that the tariff does not clearly identify it as a potentially responsible party, and that it should not be subject to the tariff because it owns no cars, and because it did not transport any cars over the Line. Preferred Freezer further objects on the ground that there is no showing by TCRY that the amount is necessary for track maintenance or that the fees will in fact be used by TCRY for Track maintenance. Lamb Weston objects to an invoice dated July 23, 2020, it received for \$20,045.00 from TCRY under Supplement 1 for “Track Maintenance charges.” Lamb Weston objects to the invoice because it does not “have a direct business relationship” with TCRY.¹⁰ CWCP disputes the invoice dated July 3, 2020 that it received in the amount of \$801,135.00 because “CWCP has no contracts, agreements or working relationships of any kind with the TCRY.” Pursuant to Section 7.2 of the Lease, the Port provided copies of the shipper complaints to TCRY but has been unable to resolve the disputes. In response, TCRY did not provide a response to the complainants’ position that TCRY cannot legally assess charges upon non-TCRY

⁸ Billetdeaux V.S., Exhibit 4, Emails from David Billetdeaux, Port of Benton to Rydel Peterson, TCRY dated Mar. 17 and Mar. 23, 2020.

⁹ Preferred Freezer, CWCP and Lamb Weston did not receive any invoices until July 2020. The initial Preferred Freezer and Lamb Weston invoices each covered the period January 16, 2020 – June 30, 2020, while the initial CWCP invoice covered the period from September 18, 2018 – June 30, 2018.

¹⁰ See Billetdeaux V.S., Exhibit 6, Email from Dirk Martin, Lamb Weston to David Billetdeaux Port of Benton, dated Aug.3, 2020, complaining about TCRY Supplement 1 and 5 with accompanying Invoice 11470.

customers, but instead TCRY's counsel asked the Port to confirm that CWCP, Del Hur, and Preferred Freezer owe the tariff charges under Supplement 1. The Port responded that as the non-operating owner of the Line, it is not in the position to determine whether a tariff applies to any given entity.

Perhaps in an attempt to resolve the complaints about lack of notice, the Port has been advised that TCRY (through its counsel) sent a letter dated August 12, 2020, to CWCP indicating that TCRY believes that the July 23, 2020 invoice that it sent to CWCP constitutes notice to CWCP of the issuance of Supplement 1, and that no amounts are owed for tariff charges prior to July 23, 2020.¹¹ The letter included an invoice of \$13,395.00 for the period from July 23 – 31, 2020. The Port does not know if TCRY has sent similar letters to any or all shippers that received invoices under Supplement 1 (including the other complaining shippers).

Supplement 5

On June 8, 2020 (immediately after withdrawing its petition at the Board to modify the trackage rights agreement), TCRY sent the Port a copy of proposed Supplement 5 requesting that the Port approve the charges in Supplement 5 (Appendix C hereto), pursuant to the Lease. Supplement 5 indicates that the charges are for the “management, operation, and maintenance of the railroad,” and are to be assessed against “Local Rail Users.”¹²

Supplement 5 would impose a Track Use Fee upon any rail users that “traverse TCRY trackage.” TCRY defines “Local Rail User” as defined by the Port of Benton Rail Plan (adopted 2012) Section 2.8 and the Port of Benton and City of Richland Rail Master Plan (adopted 2017)

¹¹ Billetdeaux V.S., Exhibit 9, Letter dated Aug. 12, 2020 from Rydal Peterson to Dennis Kylo, CWCP.

¹² Billetdeaux V.S., Exhibit 10, Email from Rydel Peterson, TCRY to David Billetdeaux, Port of Benton requesting approval of Tariff 5 (June 8, 2020) and D. Billetdeaux June 15, 2020 response requesting additional information.

Section 2.6.¹³ TCRY states in Supplement 5 that “[t]he Track use Fee has been reviewed and approved by the Port of Benton to ensure its compliance with the Port of Benton’s agreements with the United States.” However, that is not the case, as the proposed tariff is still under review by the Port. Further, because the Port has not yet approved Supplement 5, the Port does not believe it has been properly issued, and therefore should not yet be effective.¹⁴

The Port began its review of proposed Supplement 5 by asking TCRY a number of clarifying questions.¹⁵ The Port also provided copies of the proposed tariff to the City of Richland, to UP and BNSF, and to the following shippers on the Line that receive service from UP and BNSF (and not TCRY) that potentially would be “Local Rail Users” to whom the Tariff might apply¹⁶, and invited comments and questions: Henningsen Cold Storage, Lamb Weston, CWCP, Packaging Corp of America, DelHur Industries (“DelHur”), Preferred Freezer, and Lineage Logistics (the parent company of Preferred Freezer).

The Port received only limited responses from TCRY, and as such has not completed its review of the proposed charges.

¹³ The relevant sections of the Rail Plans are attached as Appendix D and Appendix E hereto (respectively).

¹⁴ The Port does not believe that TCRY has attempted to implement Supplement 5 although it is posted on TCRY’s website.

¹⁵ Billetdeaux V.S., Exhibit 10, Email from Rydel Peterson, TCRY to David Billetdeaux, Port of Benton requesting approval of Tariff 5 (June 8, 2020) and D. Billetdeaux June 15, 2020 response requesting additional information.

¹⁶ Appendix F, Consultation emails from David Billetdeaux dated June 29, 2020 (Supplement 5 attachment not included). Because the referenced Rail Plans are from 2012 and 2017, the Port believes that the Local Rail Users identified may not be current or complete. The Port did not send copies to any TCRY served Local Rail Users so as not to be accused by TCRY of any interference with TCRY’s relationships with its customers; however, TCRY’s current customers would appear to be Local Rail Users and subject to the charges set forth in Supplement 5.

The Port did receive complaints from the following shippers: Lamb Weston, DelHur, CWCP, Packaging Corp of America, and Preferred Freezer.¹⁷ The complaints generally object to the potential application of the charges to the shippers given that BNSF or UP, and not TCRY, provide them rail service.¹⁸ They also complain that Supplement 5 does not clearly identify the party that will be billed or responsible for the charges, the lack of any showing that the proposed charges are necessary for track maintenance, or that any charges collected will in fact be used by TCRY for track maintenance.

Section 7.2 of the Lease provides that if any user of the railroad files a complaint with the Port concerning “TCRY’s rates, tariffs or operations,” the Port is required to notify TCRY of the complaint and attempt to resolve the complaint through negotiations with TCRY and complainant. Accordingly, the Port notified TCRY about the complaints in an attempt to seek resolution of the shippers’ objections.¹⁹ However, TCRY refused to discuss with the Port any changes to the proposed Supplement 5, or to provide the Port with any authority supporting its right to assess tariff charges on shippers to which it does not provide rail transportation service or with which it does not have any commercial arrangements.²⁰ Thus, the Port has been unable to resolve the complaints.

¹⁷ Billetdeaux V.S., Exhibit 5, Preferred Freezer; Exhibit 6, Lamb Weston; Exhibit 7, CWCP; Exhibit 11, DelHur Industries, Inc.; and Exhibit 12, Packaging Corp of America.

¹⁸ *Id.*

¹⁹ Billetdeaux V.S., Exhibit 13, communicating DelHur and CWCP complaints; Exhibit 14, communicating Lamb Weston complaint; Exhibit 15, communicating Packaging Corp. of America complaint; Exhibit 16, communicating Preferred Freezer complaint.

²⁰ Billetdeaux V.S., Exhibit 17, Email from Rydel Peterson to David Billetdeaux in response to the Port’s request for information regarding Supplement 5 dated June 16, 2020.

Required notice of new tariff charges

TCRY has posted copies of Supplement 1 and proposed Supplement 5 on its website (although there is direct link on the homepage of the website to easily find these Supplements or TCRY's other tariffs). Each Supplement indicates "issued" and "effective" dates; however, the issued dates reflect the dates the Supplements were submitted to the Port for approval, and the effective dates predate their approval by the Port (before which tariffs cannot be effective under the Lease). Based on the complaints of the shippers with respect to Supplement 1, the Port does not believe that TCRY provided individual notice of Supplement 1 (or proposed Supplement 5) to shippers prior to invoicing them. The recent letter from TCRY to CWCP (see footnote 11 above) seems to acknowledge that individual notice must be given to individual entities that may be subject to the tariff charges before the tariff is assessed. In the letter, TCRY asserts that the July 23, 2020 invoice that it sent to CWCP should be treated as notice of the Supplement 1 charges (although the letter acknowledges that no amounts are owed for that invoice (or any prior invoices). The Port is not in a position to determine if an invoice constitutes proper notice under 49 CFR Part 1300 (assuming that TCRY has the right to assess the tariffs against shippers receiving service over the Line from carriers other than TCRY), or whether TCRY would have the right to assess charges under Supplement 1 beginning on the date of the notice or pursuant to 49 CFR 1300.4, must wait until 20 days after the notice has been given. Because the question of notice has been disputed by the shippers, the Port requests that the Board resolve the question of what notice must be provided by TCRY, and to whom, before the tariff charges can be effective.

ARGUMENT

The Board has discretion to issue declaratory judgments to eliminate controversy and remove uncertainty. 5 U.S.C. §554(e); 49 U.S.C. §1321.

Section 7.2.2 of the Lease provides that if the Port is unable to resolve a complaint that is within the jurisdiction of the Board, “and which the [Board] will accept for resolution, the complaint shall be referred to the [Board]...” Here, the Port has not yet approved or denied Supplement 5. However, the Port has received complaints from shippers that are served by BNSF or UP and do not have any privity or direct commercial connection for transportation services with TCRY, regarding the right of TCRY to assess the proposed Supplement 5 charges on them. Moreover, the Port has received complaints from shippers disputing invoices sent to them assessing charges under Supplement 1 on similar grounds. Based on the provisions of Section 7.2.2 of the Lease, the Port has filed this Petition for Declaratory Order to request that the Board accept the Port’s referral of the following disputed matters for resolution by the Board:

- (a) Does a rail carrier such as TCRY have authority to assess the charges set forth in the Supplement 1 against entities that are not rail customers of or shippers served by TCRY?
- (b) Does a rail carrier such as TCRY have authority to assess the charges set forth in the proposed Supplement 5 against “Local Rail Users” that are not rail customers of or shippers served by TCRY?
- (c) Is TCRY required under 49 CFR Part 1300 to provide copies of its tariffs to any entity it asserts is responsible for the charges, at least 20 days in advance of assessing such charges? Does an invoice assessing charges under a tariff provide sufficient notice of the tariff charges under 49 CFR Part 1300?

The Port believes that it is within the Board's jurisdiction to review tariffs for a determination of whether a rail carrier can assess a tariff against an entity that is not served by the rail carrier and which has no commercial relationship for transportation services with the rail carrier, and if the tariff is permissible, what notice must be provided by a rail carrier to potentially responsible parties under 49 CFR Part 1300. Although the Board leaves for the courts to enforce and interpret contracts,²¹ the issues here are not contractual, but rather disputes over tariff requirements - whether and which entities can be assessed under a tariff, and what notice must be provided to potentially responsible entities.

Proposed Procedural Schedule

The Port believes that TCRY, potentially affected shippers on the Line, and the other carriers providing the service to Local Rail Users should have the opportunity to respond to the Board with respect to the application of Supplement 1 and proposed Supplement 5 and the questions raised by this Petition, and accordingly is serving a copy of the Petition on all such potential parties that it has been able to identify as shown on the attached Certificate of Service. As a preliminary matter, the Port requests that TCRY be required to provide the Port with a list of the names and addresses (email addresses where available) of all entities to whom it has sent invoices for charges under Supplement 1, and a list of the names and addresses of any additional Local Rail User that it contends will be subject to the charges in Supplement 5 so that the Port

²¹ See *TCRY Discontinuance Decision*, slip op. at 5.

can serve such parties with a copy of this Petition and the accompanying Billetdeaux V.S. The

Port proposes the following schedule for this proceeding:

Day 0	Board accepts Petition and opens a proceeding
Day 7	TCRY to provide additional names and addresses (email addresses if available) of invoiced rail users under Supplement 1, and Local Rail Users under Supplement 5
Day 14	Port to provide copy of the Petition to the additional potential parties identified by TCRY
Day 35	Due date for replies and comments of any interested parties
Day 49	Due date for rebuttal by any party to replies and comments

CONCLUSION

For the reasons stated above, the Port respectfully requests that the Board accept the Petition, open a proceeding and establish a procedural schedule as proposed above, to allow the Board to resolve the controversies raised by the Port in this Petition.

Respectfully submitted,

/s/ Eric M. Hocky

Eric M. Hocky
Clark Hill PLC
Two Commerce Square
2001 Market St.
Suite 2620
Philadelphia, PA 19103
(215) 640-8500
ehocky@clarkhill.com

Justin J. Marks
Clark Hill PLC
1001 Pennsylvania Ave. N.W.
Suite 1300 South
Washington, DC 20004
(202) 772-0916
jmarks@clarkhill.com

Attorneys for Port of Benton, WA

Dated: August 14, 2020

VERIFICATION

I hereby verify on behalf of the Port of Benton, WA, under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.

Executed on August 14, 2020.

A handwritten signature in black ink, appearing to read 'David J. Billetdeaux', written over a horizontal line.

David J. Billetdeaux
Port of Benton, Attorney

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served by email
on the following persons:

Rydel Peterson rydel@tcry.com
Counsel for Tri-City Railroad Company, LLC

Thomas F. McFarland
mcfarland@aol.com
Counsel for Tri-City Railroad Company, LLC

Jeremy M. Berman
jmberman@up.com
Counsel for Union Pacific Railroad Company

Jill Rugema
jill.rugema@bnsf.com
Counsel for BNSF Railway Company, Inc.

Bill Friend
bill.friend@henningsen.com
Henningsen Cold Storage

Brad Sanders
Brad.Sanders@lambweston.com
Lamb Weston

Dennis Kylo
dennisk@cwcorn.com
Central Washington Corn Processors

Katy Conlan
katyconlan@packagingcorp.com
Packaging Corp of America

John Doyle
jdoyle@delhur.com
DelHur Industries

Edward Gottschalk
egottschalk@preferredfreezer.com
Preferred Freezer of Richland, LLC

Mark B. Tuvim

mtuvim@grsm.com

Counsel for Preferred Freezer of Richland LLC

Albert Nicholson

ANicholson@lineagelogistics.com

Lineage Logistics



Justin J. Marks

Dated: August 14, 2020

APPENDIX A

LEASE

RAILROAD LEASE
Port of Benton-Tri-City Railroad Company

PARTIES:

LESSOR: PORT OF BENTON, a municipal corporation of the State of Washington, hereafter "Port".

TENANT: TRI-CITY RAILROAD COMPANY, L.L.C., a Washington limited liability company hereafter "Tenant".

RECITALS:

WHEREAS, the Port acquired the Southern Connection of the Hanford Railroad from the United States Department of Energy (hereafter "DOE") to prevent the closure of the railroad and to maintain railroad operations for economic development purposes.

WHEREAS, DOE conveyed the former 1100 Area to the Port to enable the Port to generate revenues to pay the costs of operation and maintenance of the railroad.

WHEREAS, the Port entered into an Operations and Maintenance Agreement with Livingston Rebuild Company dated October 1, 1998 which has been assigned to the Tenant and this agreement requires the Port to pay certain expenses related to the railroad, including insurance premiums, in excess of \$100,000.00 per year and the Port has the responsibility for the inspection, maintenance and replacement of the bridges and overpasses.

WHEREAS, the Port has been required to pay for the replacement of a section of the railroad bridge which was destroyed by fire.

WHEREAS, the Port entered into a Building Lease with Livingston Rebuild Company for the railroad maintenance building in the Port's Manufacturing Mall (formerly DOE's 1100 Area), which Lease has been assigned to the Tenant.

WHEREAS, the parties wish to transfer the costs associated with the operation of the railroad, including the insurance and the responsibility for the inspection and maintenance of the bridges and overpasses to the Tenant.

WHEREAS, the Port has been required to respond to an inquiry by the Railroad Retirement Board concerning the Port's liability for pension payments as an railroad operator and the Port wants to avoid classification as a railroad operator.

WHEREAS, the Port wishes to transfer the responsibility for rail operations and for negotiating with major carriers to the Tenant and to relieve the Port of the responsibility for such activities; now therefore it is hereby agreed among the parties as follows:

AGREEMENTS:

1. LEASE. Port hereby leases to Tenant upon the terms, covenants and conditions contained herein, the real and personal property known as the Port of Benton Railroad Southern Connection and the 1171 Building (hereafter the "Property"). The real property is described on Attachment 1.

1.1 The Property consists of approximately 16 miles of railroad trackage and right of way extending from the Richland Connection in Kennewick, Washington to the Port of Benton's Manufacturing Mall in Richland, Washington, and generally bordered by Horn Rapids Road on the north, formerly known as the 1100 Area, including the tracks, bridges, trestles, crossings and maintenance equipment. The equipment and fixtures are more particularly described on Attachment 2 to this Agreement.

1.2 The Tenant has been operating the Port of Benton railroad and has occupied the 1171 Building since October, 1998 and is fully familiar with the Property and agrees to take the Property in its present condition, and subject to the restrictions contained in the Indenture between the United States of America and the Port, the amendments thereto, and the Quit Claim Deed from the United States of America, copies of which has been provided to the Tenant. The Tenant agrees to take the Property in its present condition without warranties. The Tenant is relying upon its own inspections of the Property to determine whether to enter into this Lease, and the Tenant is not relying upon any representation made by the Port, its employees or agents, except as specifically set forth in this Lease.

1.3 The Port may acquire trackage rights to use additional railroad tracks owned by DOE serving the Hanford Project. To the extent that the Port acquires additional trackage rights from the DOE, the Port will attempt to negotiate an agreement with the Tenant to add the track rights to this agreement, if permitted by the terms of any agreements with the United States and to the extent the terms of the agreement for trackage rights are acceptable to the Tenant. An agreement to add additional track to this agreement, may require the Tenant to pay additional fees to the Port based upon volume of traffic over the tracks. Provided, that the Port may cancel any agreement with the United States for trackage rights without any further obligation to Tenant. Provided, further, in the event the Port terminates its agreement with the United States for trackage rights, the Tenant shall be free to negotiate with the United States for the trackage rights.

1.4 The Port of Benton currently has a Memorandum of Agreement with DOE to use the track north of Horn Rapids Road to the Energy Northwest Generating Station site, which the Port agrees to allow the Tenant to utilize under the terms of this Lease, provided that the Tenant maintains the track as herein required. DOE has proposed a Memorandum of Agreement with the Port of Benton for use of the Hanford Railroad north of the Energy Northwest Generating Station. After the execution of the MOA by the Port and DOE, the Port will permit the Tenant to utilize additional track which is covered by the MOA, provided that the Tenant complies with the terms and conditions of the MOA and subject to the provisions of this Lease.

2. TERM. This lease shall run for a period of ten years commencing on the 1st day of August, 2002 and terminating on the 31st day of March, 2012.

2.1 The Tenant shall have the option to extend this Lease for two additional terms of ten years each after the expiration of the initial term and after the expiration of the first renewal term.

2.2 The option to extend this Lease shall be deemed to have been exercised unless the Tenant shall give the Port written notice of its intent not to exercise an option at least one hundred eighty (180) days prior to termination of the initial term or the expiration of the first renewal term.

2.3 The Tenant may only exercise the right to extend the term of this Lease if the Tenant is not in material default in the performance of the terms of this Lease at the time the Tenant exercises the option or at the time an option is deemed to be exercised under Section 2.2.

2.4 In the event the Tenant elects not to exercise the Lease extension as provided in this Section, then this Lease shall terminate and the Tenant shall have no further rights under the terms of the Lease.

3. RENT. Tenant shall pay rent, in advance on the first day of each month during the term of this lease, in the following amounts:

3.1 During the initial term of the lease, the parties have agreed that the monthly rental for the real property, railroad trackage, right of way and building more particularly described in Attachment 1, shall be \$2,000.00, plus the applicable leasehold tax as hereafter provided.

3.2 In addition to the rent for the real property, the Tenant shall pay \$2,000.00 per month as rent for the railroad maintenance and operation equipment owned by the Port and more particularly described on Attachment 2. The Tenant shall be responsible for the payment of any sales tax which may be payable as a result of the lease of equipment.

3.3 Rent payments shall be made payable to the Port of Benton and shall be paid at the Port offices at 3100 George Washington Way, Richland, Washington, or at such other address as the Port shall direct in writing.

3.4 In addition to the rent provided for herein, the Tenant shall pay the Leasehold Tax as required by the Revised Code of Washington Chapter 82.29A, as the statute may be hereafter amended. The Leasehold Tax shall be paid with each monthly installment of rent. The current leasehold tax rate is 12.84%.

3.5 Commencing five (5) years from the commencement date of this lease, and on every anniversary thereafter, the minimum rent set forth in sections 3.1 and 3.2 shall be increased in order to reflect the proportionate increase, if any, occurring between the commencement date and such adjustment date in the cost of living as indicated by the Consumer Price Index for Urban Consumers - Western US Average - All Items, as published by the U.S. Department of Labor's Bureau of Labor Statistics (the "Index"). Such adjustment shall be accomplished by multiplying the numerator of which shall be the Index level as of the January preceding the date of adjustment, and the denominator of which shall be the Index level as of the January preceding the Lease commencement date. Any adjustment of rent shall become effective immediately. In no event shall the rent be less than that specified in sections 3.1 and 3.2. If the index is discontinued, Landlord shall substitute a similar index of consumer prices.

3.6 Any rent payment not paid within ten days of the date upon which the Tenant receives notice that a payment is past due shall accrue interest on the unpaid rent at the rate of one and one-half percent of the late payment for each month or portion of month by which the payment is delayed.

4. CONDITION OF PROPERTY. The Tenant shall take the Property in its present condition, without warranties or representations by the Port except as set forth in this Lease. The Tenant shall be responsible for the maintenance and repair of the railroad maintenance and operation equipment owned by the Port and used by the Tenant pursuant to this Lease. In the event any of the Port equipment becomes inoperable or unusable for any reason the Port shall not be required to provide replacement equipment. If the equipment becomes obsolete or inoperable through no fault of the Tenant, the unusable equipment shall be returned to the Port and the rent shall be adjusted to account for the equipment which is no longer being used by the Tenant. This provision shall not apply to the equipment that becomes inoperable due to the Tenant's failure to properly maintain the equipment.

5. SECURITY. The Tenant shall provide a rent security in accordance with RCW 53.08.085 in an amount equal to the rent and Leasehold Tax to be paid during the initial year of this Lease.

6. TAXES AND ASSESSMENTS. Tenant shall pay all taxes assessed against the buildings and improvements owned by the Tenant and the other property of Tenant located upon the Property, promptly as the same become due. Tenant shall pay all assessments hereafter levied against the Property, or a portion thereof, during the term of this Lease, including assessments coming due to any special purpose governmental district; provided, however, if the assessment is payable in installments, whether or not interest shall accrue on the unpaid installments, the Tenant may pay the assessments in installments as they become due, provided

that the Tenant's obligation to pay the assessments levied during the term of the Lease, even though paid in installments, shall survive the termination or expiration of this Lease.

6.1 Tenant may contest the legal validity or amount of any taxes, assessments or charges which Tenant is responsible for under this Lease, and may institute such proceedings as Tenant considers necessary. If Tenant contests any such tax, assessment or charge, Tenant may withhold or defer payment or pay under protest but shall protect Port and the Property from any lien. Port appoints Tenant as Port's attorney-in-fact for the purpose of making all payments to any taxing authorities and for the purpose of contesting any taxes, assessments or charges.

7. USE. The Tenant shall use the Property for the operation and maintenance of railroad transportation facilities, for uses in conjunction with or reasonably connected to the permitted uses and for no other purposes except those approved in writing by the Port.

7.1 The Tenant's use, operations, and maintenance of the tracks shall comply with the provisions of the Quit Claim Deed and Indenture from the United States of America through which the Port acquired title to the property. In addition, the Tenant shall comply with all laws, rules and regulations applicable to the Tenant's use, operation and maintenance of the property. Any tariffs imposed upon the use of the railroad by the Tenant shall be reasonable in light of the use of the railroad and shall be subject to the review and approval of the Port, to insure compliance with the Port's agreements with the United States.

7.2 In the event the Department of Energy, or any user of the railroad files a complaint with the Port concerning the Tenant's rates, tariffs or operations, the Port will notify the Tenant of the complaint and will attempt to resolve the complaint through negotiations with the Tenant and the complainant.

7.2.1 If the complaint involves matters which are within the purview of National Surface Transportation Board (NSTB), the Port will, to the extent applicable, utilize the rules of the NSTB to resolve the dispute.

7.2.2 If the Port is unable to resolve the complaint which is within the jurisdiction of the NSTB and which the NSTB will accept for resolution, the complaint shall be referred to the NSTB, if permitted by the terms and conditions of the Indenture and the Quit Claim Deed.

7.2.3 Complaints which can not be referred to the NSTB, shall be resolved pursuant to the terms and conditions of this Lease.

7.3 The Port acquired title to the Property by conveyances from the United States of America. The Tenant covenants that it will not use the Property in any manner which would subject the Property to forfeiture under the provisions of the above-described Indenture or quit claim deed.

7.4 The Tenant shall not take any actions which will amend, modify, terminate or invalidate any existing contracts which the Port has with any other railroad carrier, without the

Port's prior written consent. The Tenant shall continue to provide railroad access to areas currently served by the railroad unless the Port and Tenant mutually agree that such access is no longer practicable.

8. MAINTENANCE OF PROPERTY. Throughout the term of this Lease, Tenant, at its sole cost and expense, shall maintain the Property and all improvements and fixtures then existing thereon in good condition and repair, subject to reasonable wear and tear, and in accordance with all applicable covenants, laws, rules, ordinances, and regulations of governmental agencies applicable to the maintenance and operation of the railroad, provided, however, that the Port shall be responsible for the maintenance of the roof and the exterior walls of the 1171 Building. The Tenant will maintain the equipment described on Attachment 2 in good working condition and repair, ordinary and usual wear and tear excepted.

8.1 Tenant will provide for regular inspections of the railroad bridges, spans and overpasses by certified personnel. The inspections will comply with the requirements of CFR 49 and any other applicable laws and regulations to maintain the railroad as a Class 3 railroad. Tenant will promptly repair any conditions which require repair or replacement in order to comply with applicable rules and regulations. The obligation to maintain the railroad shall include the maintenance, repairs or replacements of the bridges, spans and overpasses and the maintenance, repair and replacement of the tracks which cross the bridges, spans and overpasses. In the event the Port assigns trackage rights to the Tenant pursuant to agreements with DOE, and the Tenant accepts the trackage rights, the Tenant agrees to assume the obligation to maintain the additional track in accordance with the terms and conditions of the agreement which the Port has entered into with DOE.

8.2 Any repairs or maintenance which is necessary for safety or the protection of life and property shall be done as soon as possible. Tenant shall promptly report any such conditions to the Port.

8.3 Tenant will provide for regular inspections and maintenance of the railroad crossings and the crossing signals by certified personnel. The inspections will comply with CFR 49 and any applicable law and regulations. The crossings and crossing signals shall be maintained in at least their present condition.

8.4 Tenant will provide all of the labor and materials necessary to maintain, repair or replace any of the railroad as required to meet the conditions of this contract.

8.5 Tenant shall be responsible for the maintenance of the equipment during the term of this agreement and shall insure the equipment against loss or damage. Upon the termination of this agreement or if Tenant determines that the equipment is no longer needed for maintenance of the railroad, Tenant shall return the equipment to the Port in its present condition, reasonable wear and tear excepted.

8.6 In the event the equipment becomes unavailable for use due to obsolescence or for any other reason, Tenant shall provide sufficient equipment to fulfill its obligations under the terms of this agreement.

8.7 The equipment shall be used only for the maintenance and operation of the railroad and for no other purpose without the prior written consent of the Port and an use agreement which provides for payment for the use of the equipment.

8.8 The Port shall retain title to the equipment and the Port may dispose of any of the equipment which is not needed for the maintenance of the railroad.

9. CONDITIONS OF CONSTRUCTION. Before any construction, reconstruction or alteration of the improvements on the Property, except for interior improvements or non-structural modifications is commenced and before any building materials have been delivered to the Property in connection with such construction, reconstruction or alteration by Tenant or under Tenant's authority, Tenant shall comply with all the following conditions or procure Port's written waiver of the following condition or conditions:

9.1 Tenant shall deliver to Port, for its approval, one set of preliminary construction plans and specifications prepared by an architect or engineer licensed to practice as such in the State of Washington including, but not limited to, preliminary grading utility connections, locations of ingress and egress to and from public thoroughfares, curbs, gutters, parkways, street lighting, designs and locations for outdoor signs, storage areas, and landscaping, all sufficient to enable Port to make an informed judgment about the design and quality of construction. All improvements shall be constructed within the exterior property lines of the Property provided that required work beyond the Property on utilities, access, and conditional use requirements will not violate this provision. Tenant shall permit Port to use the plans without payment for purposes relevant to and consistent with this Lease.

9.2 The Port shall examine the plans and specifications for the purpose of determining reasonable compliance with the terms and conditions of this Lease, the Protective Covenants and compatibility with the overall design and use. Approval will not be unreasonably withheld. Approval or disapproval shall be communicated to the Tenant, and disapproval shall be accompanied by specification in reasonable detail of the grounds for disapproval; provided that Port's failure to disapprove the initial construction plans within fourteen (14) days or subsequent construction plans within thirty (30) days after delivery to Port shall be considered to be approval.

9.3 Tenant shall prepare final working plans and specifications substantially conforming to preliminary plans previously approved by the Port, submit them to the appropriate governmental agencies for approval, and deliver to Port one complete set as approved by the governmental agencies.

9.4 Tenant shall notify Port of its intention to commence the initial construction at least fourteen days before commencement of any such work or delivery of any

materials. The notice shall specify the approximate location and nature of the intended improvements. During the course of construction, Port shall have the right to post and maintain on the Property any notices of non-responsibility provided for under the applicable law, and to inspect the Property at all reasonable times.

9.5 Except as specifically provided in this Lease, Port makes no covenant or warranties respecting the condition of the soil or subsoil or any other condition of the Property.

9.6 Once work is begun, Tenant shall, with reasonable diligence, complete all construction of improvements. Construction required at the inception of the Lease shall be completed and ready for use within eighteen (18) months after commencement of construction, provided that the time for completion shall be extended for so long as the Tenant is prevented from completing the construction due to delays beyond the Tenant's control; but failure, regardless of cause, to commence construction within eighteen (18) months from the commencement date of the Lease shall, at Port's election exercised by thirty days written notice, terminate this Lease. All work shall be performed in a workmanlike manner, substantially comply with the plans and specifications required by this Lease, and comply with all applicable governmental permits, laws, ordinances, and regulations.

9.7 Tenant shall pay the cost and expense of all Tenant's improvements constructed on the Property. Tenant shall not permit any mechanic's, or construction liens to attach to the Property. Tenant shall not permit any mechanics', materialmen's, contractors' or subcontractors' lien arising from any work of improvement performed by or for the Tenant to be enforced against the Property, however it may arise. Tenant may withhold payment of any claim in connection with a good faith dispute over the obligation to pay, so long as Port's Property interests are not jeopardized. Tenant shall defend and indemnify Port against all liability and loss of any type arising out of the construction of improvements on the Property by Tenant. Unless caused by the Port, its agents, contractors, and invitees, Tenant shall reimburse Port for all sums paid according to this paragraph, together with the Port's reasonable attorneys' fees and costs plus interest on those sums at the legal rate.

9.8 On completion of the construction of any improvements, additions or alterations, covered by this Section 9, Tenant shall give Port notice of all structural or material changes in plans or specifications made during the course of the work and shall at that time supply Port with drawings accurately reflecting all such changes. Changes which are non-structural or which do not substantially alter the plans and specifications as previously approved by the Port do not constitute a material change.

10. OWNERSHIP OF IMPROVEMENTS. All improvements constructed on the Property by Tenant as permitted by this Lease shall be owned by Tenant until termination of this Lease. Upon the termination of this Lease for any reason, any buildings, improvements or trade fixtures installed on the Property shall become the property of the Port. Provided, however, in the event, the Tenant has failed to maintain the Property as required by this Lease, or the Property is contaminated by toxic or hazardous materials as the result of the actions of the Tenant or its successors, such that in any event the value of the improvements is less than the cost of removal,

remediation or renovation to bring the Property into compliance, then the Port may require the Tenant to remove any improvements or trade fixtures installed by the Tenant. The Tenant shall repair, at Tenant's expense, any damage to the Property resulting from such removal.

10.1 The equipment and fixtures on the property which belong to the Port shall remain the property of the Port and the Tenant shall be required to maintain the Port-owned equipment and fixtures during the term of this Agreement. The equipment and fixtures owned by the Port shall be returned to the Port upon the termination of this Agreement, reasonable wear and tear excepted.

11. ASSIGNMENT AND SUBLETTING. Tenant shall neither assign, sublet nor transfer its interest in this Lease, in whole or in part, to any person or entity, without Port's prior written consent. Each sublease for any portion of the premises in addition to the reference to Section 7 of this lease, shall specifically advise the subtenant that the sublease is subject to the reverter contained in the deed and indenture from the United States to the Port of Benton. No assignment or sublease of the Lease shall relieve the Tenant of its obligations under this Lease.

12. INSURANCE. Throughout the term, at Tenant's sole cost and expense, Tenant shall keep or cause to be kept in force, for the mutual benefit of Port and Tenant, comprehensive broad form railroad liability insurance (including a contractual liability endorsement) against claims and liability for personal injury, death or property damage arising from the use, operation, maintenance, occupancy, misuse, or condition of the Property and improvements, with limits of liability of at least \$5,000,000 and with deductibles in such amounts as may be reasonably acceptable to the Port. The Port shall be an additional insured on such policies.

12.1 RAILROAD PROPERTY INSURANCE. Throughout the term of the Lease, at Tenant's sole cost and expense, the Tenant shall keep or cause to be kept in force, for the mutual benefit of the Port and the Tenant, property insurance insuring all of the tracks, bridges, trestles, crossing and other improvements, fixtures, equipment and all of the railroad property subject to this lease against loss or damage from any cause, with the Port named as the owner of the insured property. The property shall be insured for its actual replacement value with such deductibles as are acceptable to the Port.

12.2 BUILDING PROPERTY INSURANCE. The Port shall maintain property insurance insuring the improvement known as the 1171 Building described in Attachment 1 against loss or damage from fire, flood, wind, or other natural disasters, with the Port named as the owner of the insured property. The property shall be insured for its actual replacement value with such deductibles as are acceptable to the Port. The Tenant shall maintain insurance coverage on the Tenant's property, fixtures and equipment located on the premises.

12.3 PROOF OF COMPLIANCE. The Tenant shall provide the Port with Certificates of Insurance showing the coverages and deductibles. All property insurance which the Tenant is required to maintain on the Port's property shall name the Port as the owner of the property and shall insure the Port's interest in the property. The Tenant shall deliver to Port, in the manner required for notices, a copy or certificate of all insurance policies required by this

Lease. Tenant shall include a provision in each of its insurance policies requiring the insurance carrier to give Port at least ninety (90) days prior written notice before such policy terminates. Tenant shall not substantially modify any of the insurance policies required by this Lease without giving at least ninety (90) days prior written notice to Port.

13. INDEMNIFICATION. The Tenant shall indemnify and hold the Port harmless from all liability, claims, damages, losses, or costs, including attorney fees, arising out of any claim, suit, action, or legal proceedings brought against the Port by any party alleged to have resulted from the Tenant's use, operation, maintenance or occupation of the railroad or any portion of the premises or any of Tenant's activities incidental thereto, or any breach or default in the performance of any of the terms or conditions of the Tenant's obligations under this lease agreement.

14. DEFAULT.

14.1 EVENTS OF DEFAULT. Each of the following events shall be a default by Tenant and a breach of this Lease.

14.1.1 The breach of any of the terms or conditions of the Lease Agreement

14.1.2 The failure or refusal to pay when due any installment of rent or other sum required by this Lease to be paid by Tenant, or the failure to perform as required or conditioned by any other covenant or condition of this Lease.

14.1.3 The appointment of a receiver to take possession of the Property or improvements, or of Tenant's interest in the leasehold estate or of Tenant's operations on the Property for any reason, unless such appointment is dismissed, vacated or otherwise permanently stayed or terminated within sixty days after the appointment.

14.1.4 An assignment by Tenant for the benefit of creditors or the filing of a voluntary or involuntary petition by or against Tenant under any law for the purpose of adjudicating Tenant a bankrupt; or for extending time for payment, adjustment or satisfaction of Tenant's liability; or for reorganization, dissolution, or arrangement on account of or to prevent bankruptcy or insolvency; unless the assignment or proceeding, and all consequent orders, adjudications, custodies, and supervision are dismissed, vacated, or otherwise permanently stayed or terminated within sixty days after the assignment, filing, or other initial event.

14.2 NOTICE. As a precondition to pursuing any remedy for an alleged default by Tenant, Port shall give written notice of default to Tenant, in the manner herein specified for the giving of notices. Each notice of default shall specify the alleged event of default and the intended remedy.

14.3 TENANT'S RIGHT TO CURE. If the alleged default is nonpayment of rent, taxes, or other sums to be paid by Tenant as provided in this Lease, Tenant shall have ten

(10) days after receipt of written notice to cure the default. For the cure of any other default, Tenant shall have thirty days after receipt of written notice to cure the default, provided, however, that if it takes more than thirty (30) days to cure a default, the Tenant shall not be in default if it promptly undertakes a cure and diligently pursues it.

14.4 TIME OF THE ESSENCE. Time is of the essence of this Lease, and for each and every covenant or condition which must be performed hereunder.

15. PORT'S REMEDIES. If any default by Tenant continues uncured after receipt of written notice of default and the period to cure as required by this Lease, for the period applicable to the default, subject to the provisions of Section 13, the Port has the following remedies in addition to all other rights and remedies provided by law or equity to which Port may resort cumulatively or in the alternative:

15.1 Without terminating this Lease, Port shall be entitled to recover from Tenant any amounts due hereunder, or any damages arising out of the violation or failure of Tenant to perform any covenant, condition or provision of this Lease.

15.2 Port may elect to terminate this Lease and any and all interest and claim of Tenant by virtue of such lease, whether such interest or claim is existing or prospective, and to terminate all interest of Tenant in the Property and any improvements or fixtures thereon (except trade fixtures). In the event this Lease is terminated, all obligations and indebtedness of Tenant to Port arising out of this Lease prior to the date of termination shall survive such termination. In the event of termination by Port, Port shall be entitled to recover immediately as damages the total of the following amounts:

15.2.1 The reasonable costs of re-entry and reletting, including, but not limited to, any expenses of cleaning, repairing, altering, remodeling, refurbishing, removing, Tenant's property or any other expenses incurred in recovering possession of the Property or reletting the Property, including, but not limited to, reasonable attorney's fees, court costs, broker's commissions and advertising expense.

15.2.2 The loss of rental on the Property accruing until the date when a new tenant has been or with the exercise of reasonable diligence could have been, obtained.

15.3 Port may re-enter the Property and take possession thereof and remove any persons and property by legal action or by self-help and without liability for damages, and Tenant shall indemnify and hold the Port harmless from any claim or demand arising out of such re-entry and removal of persons and property. Such re-entry by the Port shall not terminate the Lease or release the Tenant from any obligations under the Lease. In the event Port re-enters the Property for the purpose of reletting, Port may relet all or some portion of the Property, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, upon any reasonable terms and conditions, including the granting of a period of rent-free occupancy or other rental concession, and Port may not be required to relet to any tenant which Port may reasonably consider objectionable.

15.4 In the event Port relets the Property as agent for Tenant, Port shall be entitled to recover immediately as damages the total of the following amounts.

15.4.1 An amount equal to the total rental coming due for the remainder of the term of this Lease, computed based upon the periodic rent provided for herein and without discount or reduction for the purpose of adjusting such amount to present value of anticipated future payments, less any payments thereafter applied against such total rent by virtue of the new lease.

15.4.2 The reasonable costs of re-entry and reletting, including but not limited to, any expense of cleaning, repairing, altering, remodeling, refurbishing, removing Tenant's property, or any other expenses incurred in recovering possession of the Property or reletting the Property, including, but not limited to, attorneys' fees, court costs, broker's commissions and advertising expense.

15.5 All payments received by Port from reletting shall be applied upon indebtedness and damages owing to Port from Tenant, if any, and the balance shall be remitted to Tenant.

16. WAIVER. No waiver of any default shall constitute a waiver of any other breach or default, whether of the same or any other covenant or condition. No waiver, benefit, privilege or service voluntarily given or performed by either party shall give the other any contractual right by custom, estoppel, or otherwise. The subsequent acceptance of rent pursuant to this Lease shall not constitute a waiver of any preceding default by Tenant other than default on the payment of that particular rental payment, regardless of Port's knowledge of the preceding breach at the time of accepting rent. Acceptance of rent or other payment after termination shall not constitute a reinstatement, extension or renewal of this Lease, or revocation of any notice or other act by Port.

17. ATTORNEYS' FEES. If either party brings any action or proceeding to enforce, protect or establish any right or remedy under this Lease, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs from the non-prevailing party. Arbitration is an action or proceeding for the purpose of this provision. The "prevailing party" means the party determined by the court or the arbitrator to most nearly have prevailed.

18. ACCESS BY PORT. Port, or Port's representatives and agents, shall have access to the Property at reasonable times and upon reasonable notice, for the purpose of inspecting the Property; provided that Port shall exercise all reasonable efforts not to unreasonably disturb the use and occupancy of the Property by Tenant.

19. RECORDING OF LEASE. Either party to this Lease may record the Lease with the Auditor of Benton County. In lieu of recording the entire Lease either party may record a memorandum of lease setting forth the legal description of the property, the parties and the term of the Lease, together with any additional information which the party deems to be relevant, and

as long as the information in the memorandum is accurate the other party agrees to sign the memorandum of lease.

20. HOLDING OVER. In the event Tenant shall hold over after the expiration or termination of this Lease, or at the expiration of any option term, such holding over shall be deemed to create a tenancy from month-to-month on the same terms and conditions of the lease except that the rental rate shall be adjusted as provided in Section 3 and the rent shall be prorated over a 365 day year and paid by Tenant each month in advance. The tenancy may be terminated by either party giving the other party thirty days written notice of the intent to terminate.

21. SECURITY FOR TENANT'S OBLIGATIONS. In addition to the security provided for in Section 5, in order to secure the prompt, full and complete performance of all of Tenant's obligations under this Lease, including but not limited to, Tenant's obligations to protect and indemnify Port from any liability subject to the lien, if any, of the holder of the first mortgage against the property, Tenant hereby grants to Port a security interest in and assigns to Port all of Tenant's right, title and interest in and to all rents and profits from the Property, all of the materials stored on the premises, and all permanent improvements constructed thereon, to secure the Tenant's obligations under this Lease. In the event Tenant defaults in any of its obligations hereunder, Port shall have the right at any time after the period for cure provided in paragraph 15.3, without notice or demand, to collect all rents and profits directly and apply all sums so collected to satisfy Tenant's obligations hereunder, including payment to Port of any sums due from Tenant. The assignment of rents to the Port shall be subordinate to any assignment of rents to a leasehold mortgagee for security purposes. Such remedy shall be in addition to all other remedies under this Lease. This security interest will not extend to the Tenant's business receivables other than rents and profits from the property, provided that this exception will not affect the enforcement or collection of any judgment obtained against the Tenant by the Port.

22. HAZARDOUS MATERIALS. Tenant shall not take or store upon the Property any hazardous or toxic materials, as defined by the law of the State of Washington or by federal law, except in strict compliance with all applicable rules, regulations, ordinances and statutes. Tenant shall comply with the Port's Hazardous Materials Communications Policy, but shall not be subject to the notice requirements thereof in connection with the installation, use, operation, or removal of usual office equipment including, without limitation, computers and photocopiers.

22.1 Tenant shall not permit any contamination of the Property. The Tenant shall immediately remove any contaminants or pollutants and shall promptly restore the Property, subject to any condition existing prior to the commencement of this Lease, which shall be the responsibility of the Port.

22.2 Tenant shall defend Port and hold it harmless from any cost, expense, claim or litigation arising from hazardous or toxic materials on the Property or resulting from the contamination of the Property, caused by the acts or omissions of the Tenant, its subtenants, employees, agents, invitees, or licensees, during the term of this Lease.

22.3 In the event of the termination of this Lease for any reason, the obligation of the Tenant to restore the Property and the obligation to indemnify the Port set forth above, shall survive the termination.

23. GENERAL CONDITIONS.

23.1 NOTICES. Any notices required or permitted to be given under the terms of this Lease, or by law, shall be in writing and may be given by personal delivery, or by registered or certified mail, return receipt requested, or by overnight courier, directed to the parties at the following addresses, or such other address as any party may designate in writing prior to the time of the giving of such notice, or in any other manner authorized by law:

Port: Port of Benton
3100 George Washington Way
Richland, Washington 99352

Tenant: Tri-City Railroad Company, L.L.C.
2355 Stevens Drive
P.O. Box 1700
Richland, WA 99352

Any notice given shall be effective when actually received, or if given by certified or registered mail, upon the recipient's receipt of a notice from the U. S. Postal Service that the mailed notice is available for pick up.

23.2 NONMERGER. If both Port's and Tenant's estates in the Property or the improvements or both become vested in the same owner, this Lease shall nevertheless not be destroyed by application of the doctrine of merger except by the express election of the owner and the consent of the mortgagee or mortgagees under all mortgages existing upon the Property.

23.3 CAPTIONS AND TABLE OF CONTENTS. The Table of Contents of this Lease and the captions of the various paragraphs are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, content or intent of this Lease or of any part or parts of this Lease.

23.4 EXHIBITS AND ADDENDA. All exhibits and addenda to which reference is made in this Lease are incorporated in the Lease by the respective references to them. References to "this Lease" includes matters incorporated by reference.

23.5 SUCCESSORS. Subject to the provisions of this Lease on assignment and subletting, each and all of the covenants and conditions of this Lease shall be binding upon and inure to the benefit of the heirs, successors, executors, administrators, assigns, and personal representatives of the respective parties. The Port agrees that if the Property is sold, assigned, or

conveyed, except for any conveyance to the United States, the Port will place a provision in any conveyance making the conveyance subject to the terms and conditions of this Lease. The Port represents, that if this Lease is recorded, any subsequent conveyance of the Property by the Port will be subject to the terms of this Lease, with the exception of any conveyance to the United States.

23.6 NO BROKERS. Each party warrants and represents that it has not dealt with any real estate brokers or agents in connection with this Lease. Each party will indemnify and hold the other harmless from any cost, expense or liability (including costs of suit and reasonable attorney fees) for any compensation, commission, or fees claimed by any broker or agent in connection with this Lease.

23.7 WARRANTY OF AUTHORITY. The persons executing and delivering this Lease on behalf of Port and Tenant each represent and warrant that each of them is duly authorized to do so and that the execution of this Lease is the lawful and voluntary act of the person on whose behalf they purport to act.

23.8 QUIET POSSESSION. The Port agrees that upon compliance with the terms and conditions of this Lease, the Tenant shall at all times have the right to the quiet use and enjoyment of the Property for the term of the Lease and any extensions.

23.9 LEASE CERTIFICATION. Upon the request of the Tenant the Port agrees to provide a written certification of the status of the Lease, to the best knowledge of the Port at the time of the certification, setting forth the following: I) whether the Lease is in full force and effect; ii) whether there have been any amendments or modifications to the Lease; iii) whether the Tenant is current in the payment of the rent and other charges under the terms of the Lease; iv) whether the Port is aware of any default or breach on the part of the Tenant.

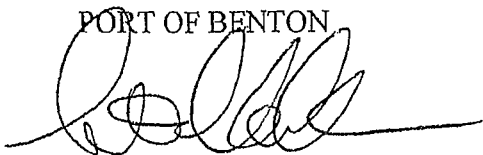
23.10 PARTIAL INVALIDITY. If any provision of this Lease is held to be invalid or unenforceable, all other provisions shall nevertheless continue in full force and effect.

23.11 CONSTRUCTION. The parties lease have reviewed this lease and have the opportunity to consult with their respective counsel. The lease shall not be deemed to be drafted by either party and the lease shall not be construed against either party as the drafter.

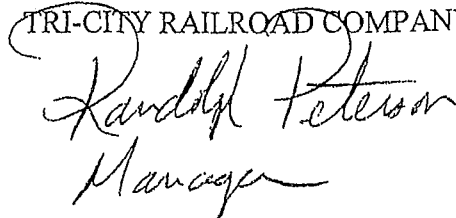
23.12 CONSENT. Whenever the consent or approval of a party to this Lease is required to be given by the terms of this Lease to the other party, such consent or approval shall not be unreasonably withheld or delayed.

DATED this 15th day of August, 2002.

PORT OF BENTON



TRI-CITY RAILROAD COMPANY, L.L.C.



Manager

By:

Executive Director

) ss.

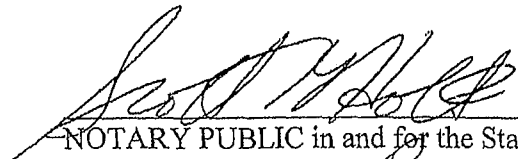
GIVEN UNDER my hand and official seal this 17 day of August, 2002.

My commission expires: June 25 2003

) SS.

On this day, before me personally appeared R. Andulph to me known to be the Manager of Tri-City Railroad Company, L.L.C., and acknowledged the said instrument to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

GIVEN UNDER my hand and official seal this 13th day of August, 2002.


NOTARY PUBLIC in and for the State of
Washington, residing at Porto, WA
My commission expires: Jan 25, 2003

APPENDIX B

SUPPLEMENT 1



MISCELLANEOUS CHARGES

Supplement 1

Dated August 28, 2018 Effective September 18, 2018

GENERAL APPLICATION

- A. TCRY shall mean TRI-CITY RAILROAD COMPANY, LLC
- B. TCRY trackage shall mean approximately sixteen (16) miles of trackage extending from the RICHLAND CONNECTION in Kennewick, Washington to the Port of Benton's MANUFACTURING MALL in Richland, Washington and generally bordered by Horn Rapids Road on the North, formerly known as the 1100 Area.
- C. All cars are subject to this Supplement 1 and to the MISCELLANEOUS CHARGES Tariff effective July 11, 2015
- D. Contact for TCRY is: TCRY attention Tariff Department, PO Box 6000, Kennewick, WA 99336, telephone 509-371-8313 or 360-239-9067.
- E. TCRY Rules, Tariffs and Accessorial Charges apply when cars are on the TCRY.
- F. The responsible party is the entity subject to this Supplement 1 to the Miscellaneous Charges Tariff.

7. Item 1. Storage Restrictions in TCRY tariff "Miscellaneous Charges" effective July 11, 2015 is **deleted** in its entirety and replaced with:

1. Railcar Storage

Railcar storage is available on TCRY for cars of any ownership when track space is available in the sole judgment of TCRY. Contact TCRY for track availability. Storage of railcars requires a written Agreement between TCRY and the responsible party for payment of storage charges.

8. Item 2. Intra-Plant & Intra-Line Switching in TCRY Miscellaneous Tariff effective July 11, 2015 is deleted in its entirety and replaced with:

2. Switch Charge

The switch charge of Six Hundred Dollars (\$600.00) per car per switch will be charged for switching of cars. TCRY reserves the right to switch any car while that car is on approximately sixteen (16) miles of TCRY trackage extending from the RICHLAND CONNECTION in Kennewick, Washington to the Port of Benton's MANUFACTURING MALL in Richland, Washington and generally bordered by Horn Rapids Road on the North, formerly known as the 1100 Area. A Fuel Surcharge is in addition to the Switch Charge and added to the Switch Charge. The Fuel Surcharge is calculated in accordance with the current "United States Department of Energy on Highway Diesel Fuel Price U.S. Average plus surcharge".

9. Item 5. UP Circular 16-E Governing Rules in TCRY Miscellaneous Tariff effective July 11, 2015 is deleted in its entirety and replaced with:

5. Railroad Maintenance Charge

A track maintenance charge of Ninety-Five Dollars (\$95.00) per car will be charged by TCRY on all cars that enter the TCRY at RICHLAND CONNECTION in Kennewick, Washington.

This charge will be collected by and accrue solely to the TCRY. This charge will be in addition to all other applicable charges.

10. Payment of Charges

The responsible party must pay TCRY in accordance with the payment terms identified on the TCRY invoice.

Cars on the TCRY system line shall be deemed acceptance of responsibility for payment of all charges accruing on the cars. Such payment shall be in U.S. money and cannot be reduced to offset claims, damages to property, or for any other reasons.

LATE FEES & FINANCE CHARGES: The TCRY will assess a Five (5%) Late Fee plus a finance charge of 1.5% per month (18% per annum) on all unpaid bills that are past due. If TCRY, at its sole discretion, uses a collection agency or attorneys to collect delinquent bills for freight or other charges and TCRY is successful in collecting such charges, the responsible party shall reimburse TCRY for its reasonable collection costs, including reasonable collection agency fees and reasonable attorneys' fees.

END

APPENDIX C

SUPPLEMENT 5



MISCELLANEOUS CHARGES

Supplement 5

Dated June 8, 2020 Effective June 28, 2020

GENERAL APPLICATION

- A. TCRY shall mean TRI-CITY RAILROAD COMPANY, LLC
- B. TCRY trackage shall mean approximately sixteen (16) miles of trackage extending from the RICHLAND CONNECTION in Kennewick, Washington to the Port of Benton's MANUFACTURING MALL in Richland, Washington and generally bordered by Horn Rapids Road on the North, formerly known as the 1100 Area.
- C. All railcars are subject to Supplement 5 and the MISCELLANEOUS CHARGES Tariff effective July 11, 2015
- D. Contact for TCRY is: TCRY attention Tariff Department, PO Box 6000, Kennewick, WA 99336, telephone 509-371-8313 or 360-239-9067.
- E. TCRY Rules, Tariffs and Accessorial Charges apply when railcars are on TCRY trackage.
- F. The responsible party is the entity, person, or business subject to Supplement 5 of the Miscellaneous Charges Tariff.

Miscellaneous Charges Supplement 1 number 9 item 5. **Railroad Maintenance Charge** is deleted in its entirety and replaced with:

5. Track Use Fee

A Track Use Fee of One-Hundred-Twenty-Five Dollars (\$125) will be applied to each and every loaded railcar that is destined to or departing from a Local Rail User.

The Track Use Fee is collected by and accrues solely to TCRY.

The applicable Local Rail User is subject to the Track Use Fee.

A Local Rail User is any entity, person, or business that ships and/or receives railcar loads that traverse TCRY trackage.

A Local Rail User is defined by example in the Port of Benton Rail Plan section 2.8 and the Port of Benton and City of Richland Rail Master Plan section 2.6 (copies of the plans are provided on TCRY's website).

The Track Use Fee is applied in accordance with the 1998 Indenture between the Port of Benton and the Department of Energy section XVIII (a copy of the Indenture is provided on TCRY's website).

The Track Use Fee has been reviewed and approved by the Port of Benton to ensure its compliance with the Port of Benton's agreements with the United States.

The Track Use Fee is used to support TCRY's ongoing efforts in the management, operation, and maintenance of the railroad.

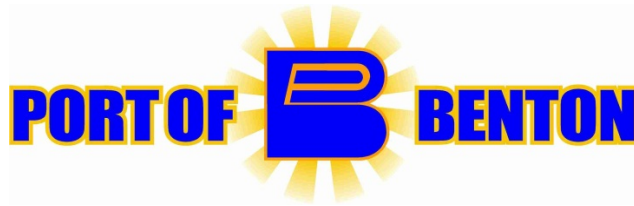
END

APPENDIX D

PORT OF BENTON RAIL PLAN (2012)

PORT OF BENTON RAIL PLAN

Prepared for:



The Port of Benton

December, 2012

Prepared by:



Tangent Services, Inc.
4160 SE International Way, Suite 206
Portland, OR 97222

This page is intentionally left blank.

Table of Contents

1.	Introduction and Purpose	1
2.	Overview	2
2.1.	Port of Benton.....	2
2.2.	Port of Benton Rail Line	2
2.3.	Rail Line History.....	3
2.4.	BNSF Railway.....	4
2.4.1.	Local BNSF Operations	6
2.5.	Union Pacific Railroad	6
2.5.1.	Local UP Operations.....	7
2.6.	Tri-City and Olympia Railroad	7
2.6.1.	Local TCRY Operations	8
2.7.	Rail Agreements	8
2.8.	Local Rail Users	8
2.8.1.	Traffic Volume.....	10
2.9.	Future Development.....	10
3.	Rail Infrastructure	12
3.1.	Track.....	12
3.1.1.	Ballast.....	12
3.1.2.	Rail Weight	12
3.1.3.	Ties	12
3.1.4.	Track Speed	12
3.2.	Bridges.....	13
3.2.1.	Irrigation Canal Bridge	13
3.2.2.	Columbia Park Trail Bridge.....	13
3.2.3.	Yakima River Bridge	14
3.2.4.	Berry's Overpass Bridge	15
3.3.	Rail Crossings.....	16
3.4.	Capital Plan	18
4.	Funding Needs and Opportunities	20
4.1.	Private/Railroad	20
4.2.	State Programs.....	21
4.3.	Federal Programs	22
5.	Conclusions and Recommendations	24

5.1. Conclusions	24
5.2. Recommendations	24
Attachment 1: State and Federal Funding Sources	25
Attachment 2: State of Washington Rail System.....	30

2.6.1. Local TCRY Operations

The TCRY operates out of the Richland Yard where the crews are based, locomotives are serviced, and railcars are maintained. TCRY has five running locomotives; three of these are GP4-2 units and two are Port-owned SW 1500 units. There are four additional locomotives that are used for parts. TCRY also has one regulator and one tamper, both Port-owned, for track maintenance.

TCRY typically runs a two-man crew from 6:00 am to 2:30 pm, Monday through Friday. They will, however, run two crews if needed and have flexible operating hours depending on the customers' requirements. TCRY has a total of six operating employees capable of performing all jobs. Total employment for TCRY in Richland is 12 people.

The limits for TCRY switching are the Kennewick Yard to the south and the end of the Port line at Horn Rapids Road to the North.

2.7. Rail Agreements

Port-TCRY: The Port has a lease agreement with TCRY (dated 2002). The agreement leases to TCRY property consisting of track, right-of-way, bridges, trestles, crossings, maintenance equipment, and the 1171 Building. The lease transfers the cost and responsibility of operating and maintaining the railroad to TCRY.

Port-BNSF/UP: The Port also has joint agreements with the BNSF and UP (dated 1947, 1961, and 1979) which grant operating rights on the Port's tracks.

City-BNSF/UP: The City has separate agreements with the BNSF and UP (both dated 2011) granting the railroads non-exclusive permission to operate on the City's track.

TCRY-UP: The TCRY has interchange and marketing agreements with the UP. The terms of these agreements are confidential. The TCRY does not have similar agreements with the BNSF. From 2000 to 2009 the BNSF contracted with TCRY to serve the Port line, interchanging at Richland Junction. Since 2009, the BNSF has been operating directly on the Port track.

TCRY-UP-BNSF: Operations on the Port's rail line are controlled by a Comprehensive Operational Plan (COP). The TCRY, BNSF, and UP have agreed the COP consists of the following TCRY-issued documents: General Orders, System Special Instruction No. 8, and Timetable 1st Subdivision No. 8.

2.8. Local Rail Users

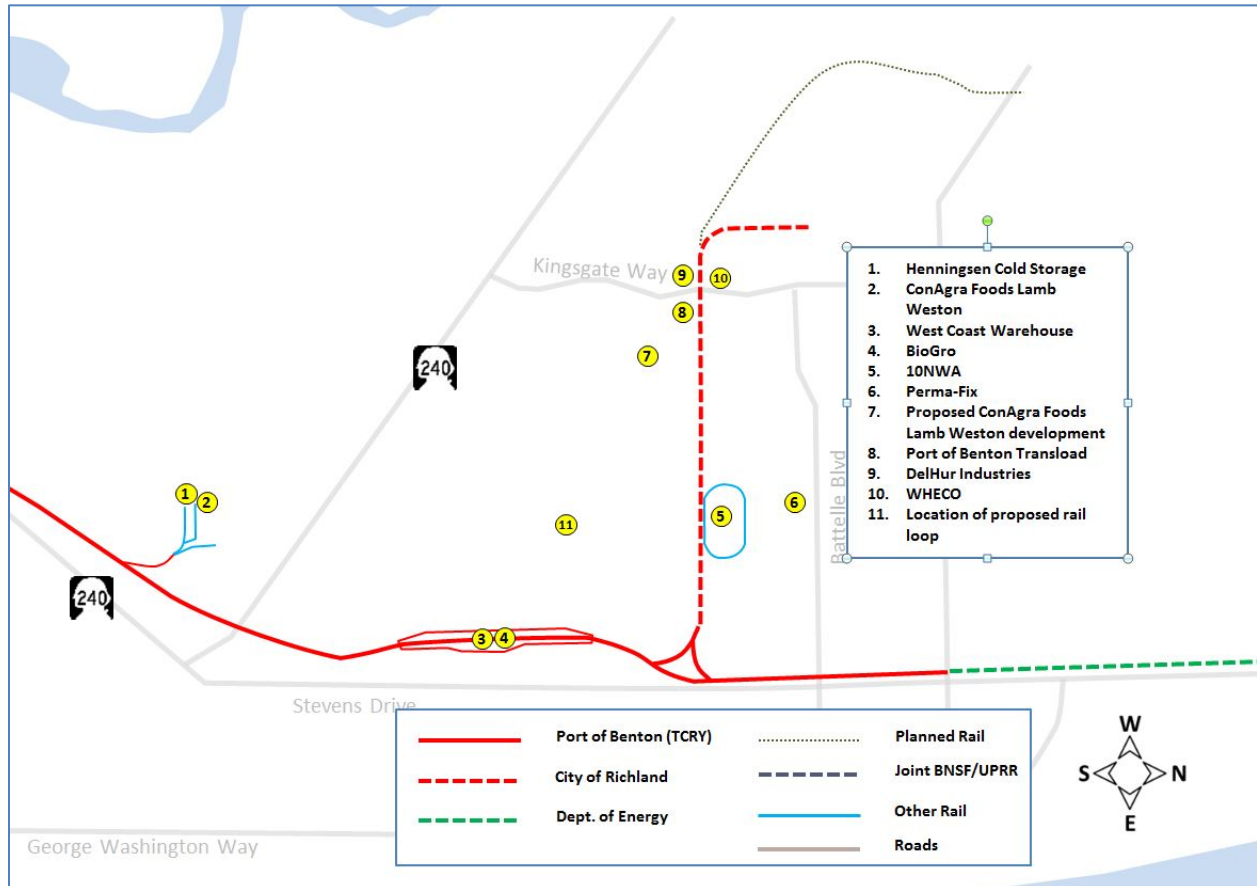
The Port rail line is a critical asset for the community and local shippers, providing important infrastructure to support economic development.

The following rail users are located on the Port of Benton line:

- **ConAgra Foods Lamb Weston** and **Henningsen Cold Storage** are located on Saint Street adjacent to the Richland Airport. The Port owns the railroad spur off the mainline and the two tenants own the tracks on their properties. Inbound oil for food processing is handled for ConAgra and outbound refrigerated jumbo boxcars are handled for both shippers.

- Located in the Richland Yard, **West Coast Warehouse** brings in salt by rail and trucks it to the ConAgra facility for use in food processing.
- Also located in the Richland Yard, **BioGro** trucks in fertilizer from Mabton and rails it out to customers.

Figure 5: Rail Users



The Port's rail line connects to a City-owned line that serves the City's Horn Rapids Industrial Park. Rail users located on the City line include:

- **10 N. Washington Ave LLC (10NWA)** is a TCRY affiliate. It is located on a 33-acre site with a spur and loop track approximately 3,800 feet in length. 10NWA owns approximately 19 acres of the site. The remaining 14 acres is owned by Central Washington Corn Processors, a feed grain company. The site is an approved UP shuttle train destination.
- **Perma-Fix Environmental Services**, which provides nuclear and industrial waste management services, has a facility on Battelle Boulevard. It completed a rail connection to the City line in 2011 which passes through the 10NWA property.³

³ Perma-Fix Environmental Services press release, April 21, 2011. Retrieved on September 29, 2012, from <http://www.perma-fix.com/news.aspx?newsframe=http://ir.stockpr.com/perma-fix/company-news/detail/3793/perma-fix-announces-completion-of-rail-line-connecting-doe-hanford-site-and-perma-fix-northwest-richland-facility>

- **ConAgra Food Lamb Weston** is developing an automated frozen product warehouse on 80 acres of land recently acquired from the City.
- The **Port of Benton** owns a 7,200 square foot refrigerated intermodal transload facility.
- **DelHur Industries** has a 15-acre site with 1,100 feet of track available for transloading bulk materials. It also has a 100-ton truck scale at the same site.⁴

2.8.1. Traffic Volume

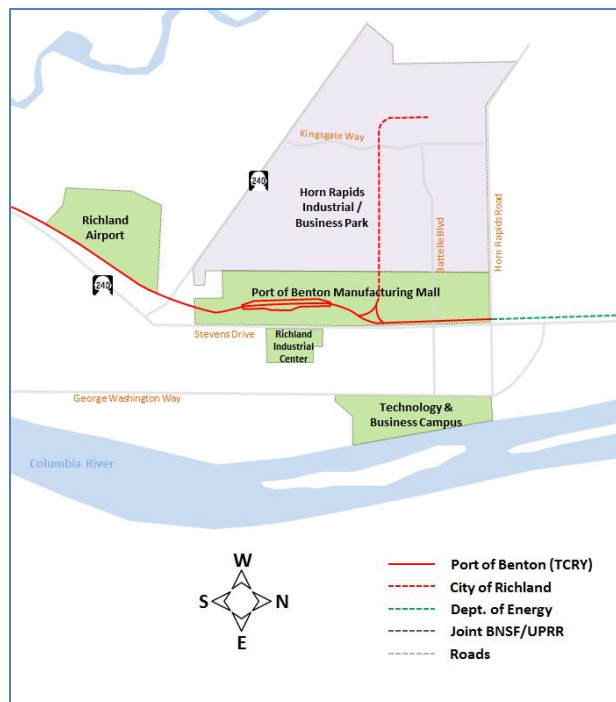
TCRY handles between 1,500 and 2,000 rail cars (roundtrip) each year.⁵

2.9. Future Development

The Port owns 10 development sites in Richland and Prosser. Of these, two are served by the Port's rail line: the 760-acre Manufacturing Mall and the 650-acre Richland Airport. The potential for more rail-related industrial development at the Richland Airport appears to be limited. The Manufacturing Mall, however, appears to have large contiguous pieces of vacant land that could be developed for rail-served industry.

The City's Horn Rapids Industrial Park has more than 1,500 acres designated for industrial use. Of this, approximately 800 acres appear to remain available for development of rail-served industry (about 350 acres east and 450 acres west of Kingsgate Way).

Figure 6: Industrial and Business Parks



⁴ DelHur Industries web site. Retrieved on October 2, 2012, from <http://www.delhur.com/richland.html>

⁵ TCry staff interview, October 17, 2012.

In November, 2011, the ConAgra Foods Lamb Weston (ConAgra) acquired 80 acres of land from the City in the Horn Rapids Industrial Park. ConAgra plans to build a \$35 million automated frozen storage warehouse on the site. The ConAgra deal also includes an option to purchase an additional 80 acres of adjacent land. Both parcels would be rail-served.

The City's capital plan includes a project to build a new two-mile long rail loop in the Horn Rapids Industrial Park at a cost of \$2.95 million.⁶ The loop would serve unit trains carrying product for the regional agricultural community. The 80-acre ConAgra option parcel is located to take advantage of the proposed loop. The City has reportedly been in discussions with multiple potential users.

In sum, there are substantial industrial land resources on the Port and City lines. This land base could drive substantial increases in rail activity into the future.

⁶ City of Richland, *Preliminary Capital Improvement Plan for Years 2013-2017*, October 2012.

APPENDIX E

PORT OF BENTON AND CITY OF RICHLAND RAIL MASTER PLAN (2017)

RAIL MASTER PLAN

Prepared for:



Port of Benton and City of Richland

January 2017

Prepared by:



Tangent Services, Inc.

with

TBY, Inc.

This page is intentionally left blank.

Table of Contents

Page

1.	Introduction and Purpose.....	1
2.	Existing Conditions	2
2.1.	Plan Sponsors.....	2
2.2.	Port and City Rail Tracks.....	2
2.3.	Rail Line History and Carriers	2
2.4.	Railroad Operations	4
2.5.	Rail Line Infrastructure.....	6
2.6.	Local Rail Users.....	8
3.	Industrial Properties	10
3.1.	Horn Rapids Industrial Park.....	10
3.2.	Transfer Area.....	10
4.	Potential Rail Uses	13
4.1.	Storage and Rail Distribution Center	13
4.2.	Vegetable Food Processing	14
4.3.	Biofuels Manufacturing.....	15
4.4.	Vegetable Oil Crushing.....	15
4.5.	Cold Storage Warehouse	16
4.6.	Inland Container Port.....	16
4.7.	Container-Dependent Industry	19
5.	Projects	21
5.1.	Focus and Objectives	21
5.2.	Project Need.....	21
5.3.	Project Costs.....	22
5.4.	Project List.....	23
5.5.	Project Descriptions	25
5.6.	Project Timing and Prioritization	36
6.	Inland Container Port Sites.....	37
6.1.	Guidelines and Requirements.....	37
6.2.	Possible Locations for an Inland Container Port.....	38
7.	Quiet Zone Analysis	41

7.1.	Quiet Zone Using Pre-Approved SSMs.....	41
7.2.	Quiet Zones Established Using Risk Analysis	42
7.3.	Quiet Zone Using Alternative Safety Measures	43
7.4.	Richland Quiet Zone Analysis	44
7.5.	Quiet Zone Liability	47
8.	Financing.....	49
8.1.	Federal Funding.....	49
8.2.	State Funding	52
8.3.	Local Funding	54
8.4.	Private Funding	55
8.5.	Revenue Agreements.....	55
8.6.	Other Issues.....	57

Supporting Materials

Page

Sources.....	59
Key Agreements	60
Attachment “A”: Crossties, Surface & Lining	61
Attachment “B”: Rail Corridor Requiring Rail Replacement	64
Attachment “C”: Rail Corridor Requiring Crossing Upgrades – Concrete Road Crossing.....	68
Attachment “D”: Rail Corridor Requiring Typical Track Section Upgrades.....	71
Attachment “E”: Rail Corridor Requiring Structural Plate Over/Under Crossing	72
Attachment “F”: Crossing Improvements to Establish a Quiet Zone.....	73
Attachment “H”: Mile Post Concordance	76
Attachment “I”: Preliminary Cost Estimates.....	77
Attachment “J”: Rail Weight Map.....	83
Attachment “K”: Crossings Map	84

about 20' 6" at four feet from center.⁶ The interchange standard for double-stack container cars (Plate H) shows a vertical height of 20' 3" over rail. **A survey of the bridge to assure there is enough vertical clearance for stacking two high-cube double-stack containers in platform wells on railcars is recommended.**

- The **Berry's Overpass Bridge**, a WSDOT-constructed concrete span, spans I-182/Highway 12.

Figure 3: Rail Bridge Photos



Irrigation Canal Bridge



Columbia Park Trail Bridge



Yakima River Bridge



Berry's Overpass Bridge

2.6. Local Rail Users

The Port's rail line is a critical asset for the community and local shippers, providing important transportation infrastructure to support economic development.

The following rail users are located on the Port of Benton line:

⁶ Source: Port of Benton, December 2016.

- **Lamb Weston** and **Henningsen Cold Storage** are located on Saint Street adjacent to the Richland Airport. The Port owns the railroad spur off the mainline and the two tenants own the tracks serving their properties. Inbound oil for food processing is handled for Lamb Weston and outbound refrigerated jumbo boxcars are handled for both shippers.
- Located in the Richland Rail Yard, **West Coast Warehouse** brings in salt by rail and trucks it to the Lamb Weston facility for use in food processing.

Rail users located off the City's Horn Rapids Spur include:

- **10 N. Washington Ave LLC (10NWA)** is a TCRY affiliate. It is located on a 33-acre site with a spur and loop track approximately 3,800 feet in length. 10NWA owns approximately 19 acres of the site. The remaining 14 acres are owned by CWCP.
- **Perma-Fix Environmental Services**, which provides nuclear and industrial waste management services, has a facility on Battelle Boulevard. It completed a rail connection to the City spur in 2011 which passes through the 10NWA property.⁷
- In 2015, **Preferred Freezer Services** opened a 455,000-square foot automated frozen product warehouse on 80 acres of land acquired from the City. The facility handles 10 to 12 railcars a day.
- In 2016, **CWCP** completed construction of a grain transload facility with an 8,500-foot loop track, rail receiving facilities, and both vertical and flat storage.
- The **Port of Benton** owns a 9,060-square foot refrigerated intermodal transload facility.
- **DelHur Industries** has a 15-acre site with 1,100 feet of track available for transloading bulk materials. It also has a 100-ton truck scale at the same site.⁸

Rail Traffic Volume

CWCP reports that it is currently handling about 4,000 railcars annually, and believes the local feed market will support a volume up to about 5,000 railcars.⁹ Preferred Freezer Services reports that it is currently loads 70 to 84 outbound railcars each week (equivalent to 3,640 to 4,368 railcars annually).¹⁰ Activity by other rail users along the line, e.g., Henningsen Cold Storage, is believed to be minimal. For the purposes of this study, the annual volume of the other users is assumed to be 750 railcars (between 500 and 1,000).

In total, the current one-way railcar volume on the Port/City rail line is approximately 8,750 railcars each year.

⁷ Perma-Fix Environmental Services press release, April 21, 2011. Retrieved on September 29, 2012, from <http://www.perma-fix.com/news.aspx?newsframe=http://ir.stockpr.com/perma-fix/company-news/detail/3793/perma-fix-announces-completion-of-rail-line-connecting-doe-hanford-site-and-perma-fix-northwest-richland-facility>

⁸ DelHur Industries web site. Retrieved on October 2, 2012, from <http://www.delhur.com/richland.html>.

⁹ Interview with Dennis Kylo, CWCP, November 8, 2016

¹⁰ PFS volumes courtesy of BST Associates, who surveyed PFS for their market study for the Port 2016.

APPENDIX F

CONSULTATION EMAILS

Marks, Justin J.

From: David Billetdeaux <david@portofbenton.com>
Sent: Tuesday, June 23, 2020 2:45 PM
To: bill.friend@henningsen.com; Duffy, Sue; kbaumgardner@corrchronin.com; hkintzley@CI.RICHLAND.WA.US; dennisk@cwcom.com; Sanders, Brad; katyconlan@packagingcorp.com; jdoyle@delhur.com; Justin Barager; egottschalk@preferredfreezer.com; Rugema, Jill M
Subject: Proposed Tariff from Tri-City Railroad
Attachments: Supplement 5.pdf

All,

Attached, please find a proposed tariff from TCRY. The Port has asked TCRY a number of clarifying questions and awaits responses as of now. In the meantime, the Port invites any comments or questions you may have in regard to this tariff. Please note that although the tariff states, "The Track Use Fee has been reviewed and approved by the Port of Benton to ensure its compliance with the Port of Benton's agreements with the United States," the Port is doing our due diligence to thoroughly review the document and has not approved the Miscellaneous Charge/Track Use Fee.

If anyone notices a shipper, or preferred contact, has been left off this list or has updated contact info, please let me know.

Thank you,

David J. Billetdeaux | [Port of Benton](#), Attorney

3250 Port of Benton Blvd. | Richland, WA 99354

509. 375. 3060 | Office

509. 375. 5287 | Fax

509. 578. 6189 | Mobile

Email: david@portofbenton.com

This email may contain privileged or confidential information disclosed only to the addressee. If you have received this email in error, do not copy or distribute it to other persons not authorized to receive it. Please call the sender at 509.375.3060 to make arrangements for the document to be retrieved or destroyed. Any use, copying, retention or disclosure by any person other than the intended recipient or the intended recipient's designees is strictly prohibited. Warning: Although the Port of Benton has taken reasonable precautions to ensure no viruses are present in this email, the Port shall not accept responsibility for any loss or damage arising from the use of this email or attachments.

Disclaimer: Public documents and records are available to the public as provided under the Washington State Public Records Act (RCW 42.56). This e-mail may be considered subject to the Public Records Act and may be disclosed to a third-party requestor.

Marks, Justin J.

From: David Billetdeaux <david@portofbenton.com>
Sent: Monday, June 29, 2020 2:41 PM
To: ANicholson@lineagelogistics.com
Subject: Proposed Tariff from Tri-City Railroad
Attachments: Supplement 5.pdf

Mr. Nicholson,

Not sure if my email last week made it to you or not, so I am re-sending it to this email. The Port was trying to track down a new contact at Lineage as opposed to the old Preferred Freezer contacts we had available.

Attached, please find a proposed tariff from TCRY. The Port has asked TCRY a number of clarifying questions and awaits responses as of now. In the meantime, the Port invites any comments or questions you may have in regard to this tariff. Please note that although the tariff states, "The Track Use Fee has been reviewed and approved by the Port of Benton to ensure its compliance with the Port of Benton's agreements with the United States," the Port is doing our due diligence to thoroughly review the document and has not approved the Miscellaneous Charge/Track Use Fee.

If anyone notices a shipper, or preferred contact, has been left off this list or has updated contact info, please let me know.

David J. Billetdeaux | Port of Benton, Attorney

3250 Port of Benton Blvd. | Richland, WA 99354

509. 375. 3060 | Office

509. 375. 5287 | Fax

509. 578. 6189 | Mobile

Email: david@portofbenton.com

This email may contain privileged or confidential information disclosed only to the addressee. If you have received this email in error, do not copy or distribute it to other persons not authorized to receive it. Please call the sender at 509.375.3060 to make arrangements for the document to be retrieved or destroyed. Any use, copying, retention or disclosure by any person other than the intended recipient or the intended recipient's designees is strictly prohibited. Warning: Although the Port of Benton has taken reasonable precautions to ensure no viruses are present in this email, the Port shall not accept responsibility for any loss or damage arising from the use of this email or attachments.

Disclaimer: Public documents and records are available to the public as provided under the Washington State Public Records Act (RCW 42.56). This e-mail may be considered subject to the Public Records Act and may be disclosed to a third-party requestor.

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36426

PORT OF BENTON, WA

PETITION FOR DECLARATORY ORDER

VERIFIED STATEMENT OF DAVID BILLETDEAUX

My name is David Billetdeaux, I am in-house attorney with the Port of Benton (the “Port”) in Richland, Washington. I have been employed by the Port since July 1, 2017. I have personal knowledge of the facts set forth in this Verified Statement, and am authorized to provide this Verified Statement on behalf of the Port in support of the Port’s Petition for Declaratory Order (the “Petition”) in this proceeding.

The Port owns a rail line (the “Line”) on Port property in Richland, WA. Three railroads serve customers on the Line: BNSF Railway Inc. (“BNSF”) and Union Pacific Railroad (“UPRR”) via trackage rights agreements entered into between the railroads and the prior owner of the property, the United States Department of Energy. Tri-City Railroad Company (“TCRY”) has rights to use the Line through a lease agreement (the “Lease”) between the Port and TCRY whereby TCRY leases Port trackage to serve customers not served by BNSF and UPRR.¹ Under the Lease, TCRY is required to maintain the Line.

¹ See Appendix A to the Petition.

The Port is submitting the Petition seeking Board assistance in resolving tariff disputes between the TCRY and non-TCRY shippers at the Port of Benton (the “Port”). This Verified Statement is being provided in support of the Petition.

The Board is familiar with the history of this Line, and TCRY’s efforts to obtain maintenance fees, through the *Adverse Discontinuance Proceeding* whereby, the Board granted the Port an adverse discontinuance to allow the Port to pursue state law remedies to terminate the Lease and evict TCRY from the Port’s Line.² In March 2020, the Port initiated the state law process for evicting TCRY from the Line by posting a 30-day Notice that TCRY either cure the breach of the Lease or vacate the premises.³

This past May, TCRY came to the Board with a Petition for Modification of the Trackage Rights Agreement between the Port and BNSF and UP in order to obtain maintenance fees from BNSF and UP. TCRY later withdrew its petition.⁴

The current disputes relate to two TCRY “Track Use Fee” tariffs that TCRY has “issued”, and seeks to enforce. The first, Misc. Charges Supplement 1 (“Supplement 1”) is described in the tariff as: “A track maintenance charge of Ninety-Five Dollars (\$95.00) per car will be charged by TCRY on all cars that enter the TCRY RICHLAND CONNECTION in Kennewick, Washington.”⁵ Supplement 1 as posted on TCRY’s website, indicates that it was issued in August 2018 to be effective in September 2018.

² *Port of Benton County, Wash. – Adverse Discontinuance of Rail Service – Tri-City Railroad Company, LLC*, AB 1270 (served Oct. 31, 2019).

³ Exhibit 1, Port of Benton Notice to Comply or Vacate.

⁴ *Tri-City Railroad Company, LLC – Petition for Modification of Trackage Rights Agreement – Port of Benton County, Wash., BNSF Railway Company and Union Pacific Railroad Company*, Docket No. FD 36396 (served June 15, 2020) (granting TCRY request to withdraw petition).

⁵ See Appendix B to the Petition.

On June 8, 2020, TCRY “issued” Misc. Charges Supplement 5 (“Supplement 5”)⁶ to be effective June 28, 2020. The Port understands that Supplement 5 would replace Supplement 1. This tariff imposes a per car fee of \$125 per loaded car on “Local Rail Users” in order to “support TCRY’s ongoing efforts in the management, operation, and maintenance of the railroad.”

Under Section 7.1 of the Lease, the Port is required to approve or deny any proposed TCRY tariff charges:

Any tariffs imposed upon the use of the railroad by the Tenant shall be reasonable in light of the use of the railroad and shall be subject to the review and approval of the Port, to insure compliance with the Port's agreements with the United States.

Although originally proposed in August 2018, due to the various litigation matters between TCRY and the Port, the Port did not approve the charges in Supplement 1 until January 16, 2020. The Port found that the charges were “not patently unreasonable” and therefore approved them.⁷ The Port did not make a determination as to what parties could lawfully be assessed with the Supplement 1 charges (it believes the Supplement is unclear), but did note its view that the charges could not be assessed against UP or BNSF based on previous federal court litigation decisions. TCRY initially sought to assess the Supplement 1 charges against the Port sending invoices in the amounts of \$39,045.00, \$65,645.00, \$43,035.00, \$47,025.00.⁸ The Port rejected the invoices because the Port does not operate rail cars over the tracks that the Port owns and does not see any basis, contractual or otherwise, that obligates the Port to pay [the TCRY]

⁶ See Appendix C to Petition.

⁷ Exhibit 2, letter from David Billetdeaux, Port of Benton to Lisa Anderson, TCRY dated January 16, 2020 (without attachments).

⁸ Exhibit 3, TCRY invoices to the Port dated Mar. 17, 2020, Apr. 1, 2020, Apr. 16, 2020, May 4, 2020.

invoices.⁹ The Port has since learned that TCRY has sent invoices to at least three shippers on the Line seeking to assess charges under Supplement 1 – to Preferred Freezer of Richland, LLC (“Preferred Freezer”) and to Lamb Weston for the period from January 16, 2020 through June 30, 2020, and to Central Washington Corn Producers (“CWCP”) for the period from September 18, 2020 through June 30, 2020. (Preferred Freezer states that TCRY billed it \$94, 905.00; TCRY billed Lamb Weston \$20,045.00; and TCRY billed CWCP \$801,125.00.) These shippers, none of which are served by TCRY, filed complaints with the Port based on their claims that they are served by either BNSF or UPRR, all rail services provided to them are supplied by either of those carriers, and that they do not have a direct business relationship with TCRY.¹⁰

The Port does not know if TCRY has billed any other shippers on the Line, either shippers served by TCRY or other shippers not served by TCRY. The Port forwarded the complaints to TCRY, but TCRY has been unwilling to address the disputes with the Port.¹¹

A further issue with Supplement 1 is a failure of TCRY to identify and notify parties that it deems responsible for payment prior to being charged.¹² It appears that each of the complaining shippers only learned of Supplement 1 upon receipt of TCRY’s invoices. Perhaps recognizing this flaw, the Port has been advised that TCRY sent a letter dated August 12, 2020, to CWCP indicating that TCRY believes that the July 23, 2020 invoice that it sent to CWCP constitutes notice to CWCP of the issuance of Supplement 1, and that no amounts are owed for

⁹ Exhibit 4, emails from David Billetdeaux, Port of Benton to Rydel Peterson, TCRY dated Mar. 17 and Mar. 23, 2020.

¹⁰ Exhibits 5, 6, and 7, Shipper Supplement 1 complaints.

¹¹ Exhibit 8, email from Rydel Peterson, TCRY to David Billetdeaux ignoring the basis of the complaints and using the shipper complaints as a basis for identifying “examples of users of the railroad that would be subject to TCRY’s Miscellaneous Charges Tariff Supplement 1 and the applicable \$95 per car Railroad Maintenance Charge” dated July 3, 2020.

¹² See Exhibit 5, Preferred Freezer complaint.

tariff charges prior to July 23, 2020. The letter included an invoice of \$13,395.00 for the period from July 23 – 31, 2020.¹³ TCRY did not advise the Port that it had sent this letter to CWCP, or that it had changed its position regarding the billing of Supplement 1 charges.) The Port is unaware if other shippers that received invoices under Supplement 1 (including the other complaining shippers) also received similar letters from TCRY with revised invoices and billing periods.

On June 8, 2020, TCRY submitted Supplement 5 to the Port for approval.¹⁴ Supplement 5 provides some guidance as to which shippers it intends to charge under the tariff. It states that the tariff applies to “Local Rail Users under the Port of Benton Rail Plan Section 2.8 and the Port of Benton and City of Richland Rail Master Plan Section 2.6.”¹⁵ According to those Rail Plans (which are 8 years old and 3 years old, respectively), a Local Rail User seems to include both shippers directly served by TCRY, as well as shippers served by BSNF or UP with whom TCRY has no commercial relationship for transportation services.

The Port has requested additional information from TCRY regarding the basis of the charges but has received only limited responses.¹⁶ The Port does not have a current list of all the shippers that might be considered Local Rail Users, in particular those shippers receiving service directly by TCRY. In conducting its due diligence, the Port sent copies of the proposed Supplement 5 inviting questions and comments to BNSF, UP and the following non-TCRY

¹³ Exhibit 9, TCRY letter to CWCP.

¹⁴ Exhibit 10, email from Rydel Peterson to David Billetdeaux requesting approval of Supplement 5 dated June 15, 2020 and David Billetdeaux response requesting additional information.

¹⁵ The referenced sections of the Rail Plans are attached to the Petition as Appendix D and Appendix E.

¹⁶ Exhibit 10, email from David Billetdeaux to Rydel Peterson requesting information in support of Supplement 5 dated June 15, 2020.

shippers: CWCP, DelHur Industries, Inc., Lamb Weston, Packaging Corp of America, Lineage Logistics, and Preferred Freezer. The Port is continuing its due diligence as to whether it should approve or deny the charges in the Supplement 5. (TCRY states in Supplement 5 that the Port has approved the tariff, but that is not the case.)

In response to its inquiries, the Port has received complaints from the following non-TCRY shippers with respect to the possible application of Supplement 5 to them: CWCP, DelHur Industries, Inc., Lamb Weston, Packaging Corp of America, and Preferred Freezer.¹⁷

The shippers' primary complaint is that no commercial arrangements exist for transportation services between TCRY and the shippers.¹⁸ The only relationship these shippers have to TCRY is that they are located on the Line that TCRY leases and maintains under the Lease; however, they are served by BNSF or UP pursuant to their trackage rights over the Line.

Under Section 7.2 of the Lease, the Port is responsible for attempting conflict resolution between TCRY and complaints concerning TCRY's "rates, tariffs or operations":

In the event the Department of Energy, or any user of the railroad files a complaint with the Port concerning the Tenant's rates, tariffs or operations, the Port will notify the Tenant of the complaint and will attempt to resolve the complaint through negotiations with the Tenant and the complainant.

As required, the Port notified TCRY of the complaints that it received from the non-TCRY shippers identified above with respect to both Supplement 1 (and the invoices received by the shippers), and with respect to the proposed Supplement 5.¹⁹ TCRY has not been responsive

¹⁷ See Exhibit 5, Preferred Freezer; Exhibit 6 Lamb Weston; Exhibit 7 CWCP; Exhibit 11 DelHur Industries, Inc.; Exhibit 12 Packaging Corp of America; and.

¹⁸ The Port understands that Preferred Freezer once had a switching/transloading agreement with TCRY that is currently being litigated by the parties.

¹⁹ Exhibit 13, communicating DelHur and CWCP complaints; Exhibit 14 communicating Lamb Weston complaint; Exhibit 15 communicating Packaging Corp. of America complaint; Exhibit 16 communicating Preferred Freezer complaint.

to the complaints that Supplement 1 and 5 cannot be imposed on shippers where no commercial agreement for transportation services exists, or given any indication to the Port that it is willing to negotiate to resolve the complaints. When asked to provide the authority under which TCRY seeks to impose Supplement 5 on non-TCRY customers, TCRY instead replied by asking the Port to “share any legal authority that the Port believes would prevent TCRY from instituting and collecting on the User Fee from Local Rail Users.”²⁰

Under the Section 7.2.2 of the Lease, for unresolved complaints that are within Board jurisdiction, the Port is directed to refer the complaints to the Board:

If the Port is unable to resolve the complaint which is within the jurisdiction of the NSTB and which the NSTB will accept for resolution, the complaint shall be referred to the NSTB, if permitted by the terms and conditions of the Indenture and the Quit Claim Deed.

Accordingly, the Port is filing its Petition with the Board seeking resolution of the complaints. The Port knows of no legal authority under which a rail carrier can impose a tariff on an entity where no commercial agreement for transportation services exists between the rail carrier and the entity, and TCRY has not provided any response to the Port’s request for such authority. With respect to the complaints from shippers regarding lack of notice of Supplement 1 prior to receiving invoices, it appears from the recent letter from TCRY to CWCP that TCRY has attempted to address that issue (at least with CWCP) by asserting that the invoice it sent to CWCP constituted notice, and telling CWCP it was not responsible for any bills prior to the notice. However, the Port does not know whether similar letters were sent to all shippers that were invoiced under Supplement 1, and is not in a position to determine if an invoice constitutes

²⁰ Exhibit 17, email from Rydel Peterson to David Billetdeaux in response to the Port’s request for information regarding Supplement 5 dated June 16, 2020.

proper notice under the Board's regulations or whether notice must be provided 20 days in advance of the assessment of charges in this situation.

VERIFICATION

I hereby verify on behalf of the Port of Benton, WA, under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.

Executed on August 14, 2020.

A handwritten signature in black ink, appearing to read 'David J. Billetdeaux', written over a horizontal line.

David J. Billetdeaux
Port of Benton, Attorney

EXHIBIT 1

NOTICE TO COMPLY OR VACATE

TO: Tri-City Railroad Company, LLC

PREMISES: The real and personal property described in the Port of Benton Tri-City Railroad Company Railroad Lease (the "Lease") including but not limited to the railroad known as the Southern Connection.

Tri-City Railroad Company, LLC is hereby notified that it is in material breach of the Lease for failure to maintain the railroad known as the Southern Connection, as required by Article 8 of the Lease.

Pursuant to RCW 59.12.030(4) and Section 14.3 of the Lease, Tri-City Railroad Company, LLC has thirty (30) days from the date of service of this Notice to either comply with its obligations under the Lease or to vacate the Premises. Tri-City Railroad Company, LLC's failure to comply with this Notice will result in it being in unlawful detainer of the Premises and judicial proceedings will be instituted for its eviction.

DATED this 17th day of March, 2020.

KELLER ROHRBACK L.L.P.

By s/ Rob J. Crichton

Rob J. Crichton, WSBA #20471

By s/ Holly E. Lynch

Holly E. Lynch, WSBA #37281

By s/ Eric R. Laliberte

Eric R. Laliberte, WSBA #44840

1201 Third Avenue, Suite 3200

Seattle, WA 98101

Telephone: (206) 623-1900

Facsimile: (206) 623-3384

Email: rcrichton@kellerrohrback.com

elaliberte@kellerrohrback.com

hlynch@kellerrohrback.com

Attorneys for the Port of Benton

AFFIDAVIT OF SERVICE

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF BENTON**

Case Number: _____

Plaintiff/Petitioner:
PORT OF BENTON,

Service Documents:
NOTICE TO COMPLY OR VACATE

vs.

Defendent/Respondent:
TRI-CITY RAILROAD COMPANY, LLC

For:
KELLER ROHRBACK L.L.P
1201 Third Ave
Suite 3200
Seattle, WA 98101

Received by PRONTO PROCESS SERVICE, INC. to be served on **LISA ANDERSON, AS REGISTERED AGENT OF TRI-CITY RAILROAD COMPANY, LLC, 10 N WASHINGTON STREET, KENNEWICK, WA.**

I, V JOHNSON, being duly sworn, depose and say that on the **17th day of March, 2020 at 1:51 pm, I:**

INDIVIDUALLY/PERSONALLY served by delivering a true copy of the **above listed documents** to: **LISA ANDERSON, AS REGISTERED AGENT OF TRI-CITY RAILROAD COMPANY, LLC** at the address of: **10 N WASHINGTON STREET, KENNEWICK, WA**, and informed said person of the contents therein, in compliance with state statutes.

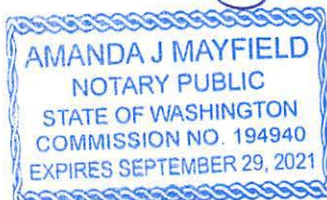
Affiant further states, based on the information available, the defendant (s) are not in the military service or a dependent of a service member.

AFFIDAVIT OF SERVICE For

The undersigned, being first duly sworn on oath, deposes and says; That he/she is now and at all times herein mentioned was a citizen of the United States and resident of the State of Service, over the age of eighteen years, not a party to or interested in the above action and competent to be a witness therein.

Subscribed and Sworn to before me on the 17th day of March, 2020 by the affiant who is personally known to me.

Amanda J Mayfield
NOTARY PUBLIC



V Johnson

V JOHNSON
2018-01

PRONTO PROCESS SERVICE, INC.
P.O. Box 1194
Pasco, WA 99301
(509) 547-1122

Our Job Serial Number: PTO-2020000979
Service Fee: \$88.50

EXHIBIT 2



January 16, 2020

Tri-City Railroad Company, L.L.C.
P.O Box 6000
Kennewick, WA 99336

*Also sent via email: rydel@tcry.com;
LisaAnderson@tcry.com*

Re: TCRY Proposed Tariff

Dear Ms. Anderson,

By your letter to me dated September 23, 2019, TCRY requested that the Port of Benton approve TCRY's request for approval of a proposed tariff titled "Miscellaneous Charges, Supplement 1" dated August 28, 2018 (the "Proposed Tariff"). I attach a copy of your letter and the Proposed Tariff. The Proposed Tariff includes a proposed "Railroad Maintenance Charge" of "ninety-five dollars (\$95.00) per car on all cars [to be] charged by TCRY on all cars that enter the TCRY railroad at RICHLAND CONNECTION in Kennewick, Washington." I now write on behalf of the Port to respond to that request.

As you know, TCRY operates a railroad on trackage leased to it by the Port through the Railroad Lease between the Port and TCRY, entered into as of August 1, 2002 (the "Lease"). The Lease generally identifies the trackage leased to TCRY by the Port as "the Port of Benton Railroad Southern Connection..." See Para. 1. The so-called Southern Connection trackage is also known as the Richland Trackage. As you know, the trackage was obtained by the Port from the U.S. Department of Energy ("DOE") pursuant to the Indenture entered into between the Port and DOE effective October 1, 1998 (the "Indenture").

Your letter quotes from Paragraph 7.1 of the Lease, which provides, "Any tariffs imposed upon the use of the railroad by the Tenant shall be reasonable in light of the use of the railroad and shall be subject to review and approval of the Port, to insure compliance with the Port's agreements with the United States." I also call your attention to Paragraph 1.2 of the Lease, whereby TCRY agreed to take the Southern Connection "subject to the restrictions contained in the Indenture...." Thus, TCRY authorized the Port to review the Proposed Tariff to determine its reasonableness and its compliance with the Indenture.

The Port has undertaken a review of the Proposed Tariff to determine its reasonableness and compliance with the Indenture, and the Port's Commissioners have directed me to advise TCRY as follows:

1. The Proposed Tariff is hereby APPROVED.
2. Notwithstanding the foregoing, the Port calls TCRY's attention to the Order issued on

July 1, 2011 by the United States District Court for the Eastern District of Washington, the Honorable Edward F. Shea presiding, in *BNSF Railway Company v. Tri-City & Olympia Railroad Company LLC*, (CV-09-5062-EFS), a copy of which is attached hereto (the "Court Order"). The Court Order provides at page 21:

As stated above, BNSF and UP have a right to operate directly on the Richland Trackage. Only the Port had the right to terminate BNSF and UP's right to use the Richland Trackage, a right which it retained and did not grant to TCRY under Railroad Lease Paragraph 7.4. Indeed, it could not do so: the Port accepted the United States' obligations under the 1947 and 1961 agreements **to provide continued use without charge to BNSF and UP under the Indenture.**

(Bold and underlining added.) Under Paragraph 7.4 of the Lease, TCRY agreed that it would "not take any actions which will amend, modify, terminate or invalidate any existing contracts which the Port has with any other railroad carrier, without the Port's prior written consent." The Court Order goes on to hold that BNSF and UP have the right **"to run directly on the Richland Trackage without paying a fee," and that TCRY's right to quiet enjoyment of the Richland Trackage was "subject to the limitations imposed by the preexisting rights of BNSF and UP..."** (Bold and underlining added.)

In light of the Court Order, the Port cautions TCRY that, while the Port approves the Proposed Tariff as reasonable, the Port believes TCRY would be in breach of the Lease and in violation of the Court Order were it to seek to impose the tariff on BNSF or UP.

3. The Port understands the Proposed Tariff to be akin to a usage fee. According to the Port's consultation with a rail industry expert, a usage fee is not meant to generate profit, but is a mechanism for reimbursement. Per the expert, usage fees on a line the size of the Southern Connection are typically determined by taking the actual maintenance costs, divided by the total number of cars handled on the track. Mr. Kavadias' report, while helpful in some regards, does not provide actual maintenance costs. He also does not explain his methodology and, in many instances, his conclusions do not make sense within the context of the documents the Port has received in the lawsuit pending in the United States District Court for the Eastern District of Washington styled *United States of America, ex rel., Randolph Peterson and Tri-City Railroad Company, LLC v. Port of Benton County, et al.*, (2:17-CV-0191-TOR) (referred to below as the "Lawsuit"). For example, for 2013, Mr. Kavadias attributes 34 % of general and administrative payroll and 54 % of wages, employee benefits, and employee taxes to maintaining the railroad. This is purportedly based on "the accounting information and timecard analysis." We looked at a (one month) representative sample of the timecards from 2013 and found that TCRY employees worked 941 hours, only 62.5 (or 6%) of which were for work related to maintaining the track. Likewise, for 2017, Mr. Kavadias attributes 100% of TCRY's signal maintenance expenditures, which he says are \$103,153.01. But as you know, that same year, TCRY received a WSDOT grant for signal upgrades and a large portion of the 2017 signal expenditures were for that WSDOT-funded project.

Notwithstanding these discrepancies, the Port took the average costs Mr. Kavadias attributed to maintenance between 2010 and 2018 and divided those costs by 8,000 – the number of loaded cars Ms. Anderson identified in her August 29, 2018 letter. Using these numbers, the Port calculated a reasonable usage fee in the \$60-per-loaded-car range. However, the Port also took into account the car

count figures identified in other documents produced in the Lawsuit, which counts were lower than the traffic volumes Ms. Anderson quoted. In considering these additional documents, the Port concluded that the Proposed Tariff in the amount of \$95 per loaded car is not patently unreasonable.

Please note that the Port's research suggests that the Proposed Tariff would fall under the purview of the Surface Transportation Board ("STB"). Because the Port has not received any complaints about the Proposed Tariff, it has not attempted to analyze it within the context of the STB's rules as regulations (as discussed in Paragraph 7.2 and its subparts of the Lease). Were the Port required to conduct that analysis, it would need more information about TCRY's actual maintenance costs to be able to resolve the discrepancies in Mr. Kavadias' report.

4. Attached to your letter of September 23, 2019 was a separate attachment titled "Maintenance Toll Fee" that states, "The Maintenance Toll Fee is assessed by TCRY to the City of Richland, the owner of the Horn Rapids Industrial Park." I attach a copy of that document. The actual language of the Proposed Tariff does not appear to support such an intention. Even if it did, to the Port's knowledge, the City of Richland does not operate a railroad and, thus, does not ship cars that would be subject to the Proposed Tariff. Further, the Court has held in the Eastern District lawsuit, in an Order issued October 10, 2019, in which the Court dismissed certain claims brought by TCRY against the City of Richland, that TCRY's rights under the Lease are subject to the City of Richland's rights under a 1997 easement from the DOE and a 1999 easement. I attach a copy of that document as well. Finally, the Port is unaware of a similar fee being imposed on a municipality. For all of the foregoing reasons, the Port does not believe that the Proposed Tariff, fairly construed, could properly be imposed on the City of Richland.

Finally, please be advised that the Port intends to provide copies of this letter to counsel for BNSF, UP, and the City of Richland, in the interests of transparency.

Best regards,



DAVID J. BILLETDEAUX
Port Counsel

Enclosures: 1. September 23, 2019 Ltr w/two attachments, incl. Proposed Tariff & Maintenance Toll Fee
 2. ECF 264 – Order Entering Court's Rulings from February 23, 2011 Hearing
 3. ECF 198 - Order Granting Defendants The City of Richland and Peter Rogalsky's Motion for Partial Summary Judgment - Entered on October 10, 2019

EXHIBIT 3



Tri-City Railroad Company, LLC

P. O. Box 6000

Kennewick, WA 99336

Invoice

Date	Invoice #
3/17/2020	11427

Bill To
Port of Benton 3250 Port of Benton Blvd. Richland, WA 99354

Terms
Due upon receipt

Quantity	Description	Rate	Amount
	Track Maintenance charges assessed on cars that entered the TCRY at Richland Connection in Kennewick, WA for the following period:		
271	March 1, 2020 - March 8, 2020	95.00	25,745.00
140	March 9, 2020 - March 15, 2020	95.00	13,300.00
	Charges assessed per Miscellaneous Charges Tariff Supplement 1 Effective September 18, 2018.		

Amounts not paid within terms are subject to a 5% late fee and 1.5% interest per month .

Balance Due

\$39,045.00

Tri-City Railroad Company, LLC

P. O. Box 6000
Kennewick, WA 99336

Invoice

Date	Invoice #
4/1/2020	11433

Bill To
Port of Benton 3250 Port of Benton Blvd. Richland, WA 99354

Terms
Due upon receipt

Quantity	Description	Rate	Amount
	Track Maintenance charges assessed on cars that entered the TCRY at Richland Connection in Kennewick, WA for the following period:		
595	March 16, 2020 - March 31, 2020	95.00	56,525.00
96	Unit Train Adjustment (3/12,3/14)	95.00	9,120.00
	Charges assessed per Miscellaneous Charges Tariff Supplement 1 Effective September 18, 2018.		

Amounts not paid within terms are subject to a 5% late fee and 1.5% interest per month .

Balance Due	\$65,645.00
--------------------	--------------------



Tri-City Railroad Company, LLC

P. O. Box 6000

Kennewick, WA 99336

Invoice

Date	Invoice #
4/16/2020	11438

Bill To
Port of Benton 3250 Port of Benton Blvd. Richland, WA 99354

Terms
Due upon receipt

Quantity	Description	Rate	Amount
	Track Maintenance charges assessed on cars that entered the TCRY at Richland Connection in Kennewick, WA for the following period:		
453	April 1, 2020 - April 15, 2020	95.00	43,035.00
	Charges assessed per Miscellaneous Charges Tariff Supplement 1 Effective September 18, 2018.		

Amounts not paid within terms are subject to a 5% late fee and 1.5% interest per month .

Balance Due

\$43,035.00



Tri-City Railroad Company, LLC

P. O. Box 6000

Kennewick, WA 99336

Invoice

Date	Invoice #
5/4/2020	11439

Bill To
Port of Benton 3250 Port of Benton Blvd. Richland, WA 99354

Terms
Due upon receipt

Quantity	Description	Rate	Amount
	Track Maintenance charges assessed on cars that entered the TCRY at Richland Connection in Kennewick, WA for the following period:		
495	April 16, 2020 - April 30, 2020	95.00	47,025.00
	Charges assessed per Miscellaneous Charges Tariff Supplement 1 Effective September 18, 2018.		

Amounts not paid within terms are subject to a 5% late fee and 1.5% interest per month .

Balance Due

\$47,025.00

EXHIBIT 4

RELEVANT TEXT HIGHLIGHTED

Marks, Justin J.

From: Rydel Peterson <rydel@tcry.com>
Sent: Tuesday, March 17, 2020 6:28 PM
To: David Billetdeaux
Subject: Re: Port invoice

David,

The tariff applies to all cars that enter the track, not just to those who operate the cars on the tracks.

When the Port approved the tariff the Port determined that the tariff was reasonable and in compliance with the Indenture.

The plain language of the tariff applies to all cars that enter the TCRY railroad and provides that the responsible party must pay TCRY in accordance with the payment terms identified on the TCRY invoice.

The Port informed TCRY that it would be in breach of the lease if it were to seek to impose the tariff on the BNSF or UP without the Port's prior written consent.

As a result, through outside legal counsel and through a plain reading of the tariff, TCRY has determined that the Port is the responsible party, for it has the authority to grant TCRY permission to impose the tariff on the BN and the UP but has refused to do so.

If the Port feels that TCRY has not specifically requested permission to impose the tariff on the BN and the UP, please take this writing as that request.

If the Port feels that it is not the responsible party, please tell us who the Port believes is the responsible party to pay the tariff.

Thank you,

Rydel

On Tue, Mar 17, 2020 at 1:02 PM David Billetdeaux <david@portofbenton.com> wrote:

Rydel,

I'm writing to let you know that I acknowledge receipt of your email and the attached invoice. However, the Port must seek to understand upon what legal basis TCRY believes it is imposing a tariff on the Port of Benton, when the Port does not operate rail cars over the tracks that we own?

Best regards,

David J. Billetdeaux | [Port of Benton](#), Attorney

3250 Port of Benton Blvd. | Richland, WA 99354

509. 375. 3060 | Office

509. 375. 5287 | Fax

509. 578. 6189 | Mobile

Email: david@portofbenton.com

This email may contain privileged or confidential information disclosed only to the addressee. If you have received this email in error, do not copy or distribute it to other persons not authorized to receive it. Please call the sender at 509.375.3060 to make arrangements for the document to be retrieved or destroyed. Any use, copying, retention or disclosure by any person other than the intended recipient or the intended recipient's designees is strictly prohibited. Warning: Although the Port of Benton has taken reasonable precautions to ensure no viruses are present in this email, the Port shall not accept responsibility for any loss or damage arising from the use of this email or attachments.

Disclaimer: Public documents and records are available to the public as provided under the Washington State Public Records Act (RCW 42.56). This e-mail may be considered subject to the Public Records Act and may be disclosed to a third-party requestor.

From: Rydel Peterson <rydel@tcry.com>

Sent: Tuesday, March 17, 2020 10:17 AM

To: David Billetdeaux <david@portofbenton.com>

Subject: Port invoice

David,

I understand that the Port's outside counsel and TCRY's outside counsel have been attempting to resolve the issues between the parties which have included options of resolving the matters on a global basis or paying the maintenance tariff in arrears on a monthly basis. However, so far, these two options have not gained much traction. While TCRY is not waiving its right to collect on the accrued tariff charges and will address that issue in the future, TCRY is going to invoice the Port twice per month for the current maintenance charges at \$95 per car.

To that end, please find attached the first invoice per the terms of the recently approved TCRY Miscellaneous Charges Supplement 1 tariff. The invoice is for the first 15 days of activity over the TCRY line for the month of March. It is vital to TCRY and the health and safety of the track that the Port agree to make the tariff payments in a timely fashion. This will allow TCRY to continue to keep the track open in a safe and serviceable condition.

Please let me know if you have any questions.

Thank you,

Rydel

Marks, Justin J.

From: david@portofbenton.com
Sent: Monday, March 23, 2020 3:26 PM
To: rydel@tcry.com
Subject: RE: Payment question

Rydel,

Based on your previous explanation, the Port does not see any basis, contractual or otherwise, that obligates the Port to pay this invoice. Therefore, there is no need to send anyone to the Port to pick up a check, nor should you be on the lookout for one in the mail.

Best regards,

David J. Billetdeaux | Port of Benton, Attorney
3250 Port of Benton Blvd. | Richland, WA 99354 509. 375. 3060 | Office 509. 375. 5287 | Fax 509. 578. 6189 | Mobile
Email: david@portofbenton.com

This email may contain privileged or confidential information disclosed only to the addressee. If you have received this email in error, do not copy or distribute it to other persons not authorized to receive it. Please call the sender at 509.375.3060 to make arrangements for the document to be retrieved or destroyed. Any use, copying, retention or disclosure by any person other than the intended recipient or the intended recipient's designees is strictly prohibited. Warning: Although the Port of Benton has taken reasonable precautions to ensure no viruses are present in this email, the Port shall not accept responsibility for any loss or damage arising from the use of this email or attachments.

Disclaimer: Public documents and records are available to the public as provided under the Washington State Public Records Act (RCW 42.56). This e-mail may be considered subject to the Public Records Act and may be disclosed to a third-party requestor.

-----Original Message-----

From: Rydel Peterson <rydel@tcry.com>
Sent: Monday, March 23, 2020 8:34 AM
To: David Billetdeaux <david@portofbenton.com>
Subject: Payment question

David,

Has the Port had a chance to put a check in the mail to cover TCRY invoice number 11427 ?

If not, would it be ok if we had someone pick it up today from the Port office ?

Thank you,

Rydel

EXHIBIT 5

MARK B. TUVIM
MTUVIM@GRSM.COM
DIRECT DIAL: (206) 695-5144



ATTORNEYS AT LAW
701 FIFTH AVENUE, SUITE 2100
SEATTLE, WA 98104
WWW.GRSM.COM

August 7, 2020

VIA EMAIL AND U.S. MAIL

David J. Billetdeaux
Port of Benton
3250 Port of Benton Blvd.
Richland, WA 99354

Re: Tri-City Railroad Company Tariffs

Dear Mr. Billetdeaux:

This law firm represents Preferred Freezer of Richland, LLC ("Preferred Freezer"). I write today to object to a tariff proposed by Tri-City Railroad Company (TCRY) and a tariff TCRY is currently attempting to impose on Preferred Freezer.

Proposed Supplement 5

Proposed Supplement 5 seeks to apply a \$125 track use fee to "each and every loaded railcar that is destined to or departing from a Local Rail User." The term "Local Rail User" is defined as (1) "any entity, person, or business that ships and/or receives railcar loads that traverse TCry trackage." The term "Local Rail User" is further defined (2) "by example in the Port of Benton Rail Plan section 2.8 and the Port of Benton and City of Richland Rail Master Plan section 2.6 (copies of the plans are provided on TCry's website."

Preferred has several objections to this proposed tariff. First, while Supplement 5 identifies the railcars subject to the proposed tariff ("loaded railcar destined to or departing from" the "Local Rail User"), it neither identifies nor defines the party responsible for payment thereof. At the very least, Supplement 5 is vague and ambiguous, and fails to provide sufficient notice to the party responsible for payment thereof. Further, to the extent TCry seeks to impose this tariff on the "Local Rail Users" despite this lack of clarity, Preferred Freezer objects to Supplement 5 to the extent it purports to levy a tariff on it based upon the language of documents which have not formally been adopted by the Port of Benton.

Preferred Freezer further objects to the proposed tariff based in the lack of any showing by TCry that the proposed amount is necessary for track maintenance or any requirement that the use fees collected will in fact be used by TCry for track maintenance.

Supplement 1

On July 23, 2020, Preferred received an invoice in the amount of \$94,905 for 999 cars at the rate of \$95 per car for “Track Maintenance charges assessed on cars that entered the TCRY at Richland Connection in Kennewick, WA for the period of January 16, 2020 – June 30, 2020 – manifest cars”. According to the invoice, the charges are “assessed per Miscellaneous Charges Tariff Supplement 1 Effective September 18, 2018 and Approved by the Port of Benton January 16, 2020. According to Rydel Peterson in correspondence dated July 28, 2020, Preferred Freezer was charged these fees as a “user of the Railroad” as defined by the Port of Benton in its Rail Master Plan.

Section 9 of Supplement 1 provides in pertinent part:

5. Railroad Maintenance Charge

A track maintenance charge of Ninety-Five Dollars (\$95.00) per car will be charged by TCRY on all cars that enter the TCRY at RICHALND CONNECTION in Kennewick, WA

This charge will be collected by and accrue solely to the TCRY. This charge will be in addition to all other applicable charges.

Under Section F of the section entitled “GENERAL APPLICATION”, Supplement 1 provides that “The responsible party is the entity subject to this Supplement 1 of the Miscellaneous Charges Tariff.”

Preferred Freezer objects to TCRY’s attempt to impose this tariff on Preferred Freezer. First, Supplement 1 has no provision which on its face identifies Preferred Freezer as a party responsible for payment of this tariff. The tariff is imposed on “all cars” that enter the identified TCRY trackage without identification of the entity responsible for payment. In fact, Preferred Freezer owns no cars – the basis for imposition of the tariff – nor did Preferred Freezer transport any cars over the identified trackage, Preferred Freezer further objects to the tariff based in the lack of any showing by TCRY that the amount is necessary for track maintenance or that the fees collected will in fact be used by TCRY for track maintenance.

Please feel free to contact me if you have any questions or require any additional information.

Best regards,

GORDON REES SCULLY MANSUKHANI, LLP

s/ Mark B. Tuvim

Mark B. Tuvim

MBT:lv

EXHIBIT 6

Marks, Justin J.

From: David Billetdeaux <david@portofbenton.com>
Sent: Monday, August 3, 2020 2:38 PM
To: Holly Lynch
Subject: FW: Complaint with Tri-City Railroad Company, LLC
Attachments: Inv_11470_from_TriCity_Railroad_Company_LLC_18836.pdf; Supplement 5.pdf

See attached and below.

-David

From: Martin, Dirk <Dirk.Martin@lambweston.com>
Sent: Monday, August 3, 2020 11:29 AM
To: David Billetdeaux <david@portofbenton.com>
Cc: Diahann Howard <dhoward@portofbenton.com>
Subject: Complaint with Tri-City Railroad Company, LLC

David,

At this point we can assert two complaints against the TriCity Railroad Company (TCRY). We ask that you forward both to the STB. Both relate to attempting to charge us fees to use the track they manage when we have no direct relationship with the TCry. We ship products utilizing the Union Pacific railroad who has an access granted to use the track as a Class 1 railroad and has a direct business relationship with TCry.

1. The first of our complaints is due to an invoice (11470) recently sent to us for track use fees referencing a Tariff already in place from 2018 and just approved by the Port of Benton in January of this year. We do not feel we owe this invoice since we do not have a direct business relationship as stated above.
2. Our second complaint relates to a recent communication of a Supplement 5 tariff that we understand the Port of Benton has yet to approve. This again we don't feel responsible for as we do not have a direct business relationship with TCry. This would be the responsibility of the UP again.

And, as I'm sure you were aware, there was a rail accident on this Friday that derailed multiple cars in South Richland on the TCry maintained line. None of our cars were damaged, but the track now being closed for days is causing us significant transportation issues and we are having to truck all our product and supplies in and out of our Richland manufacturing plant and our partner 3PL warehouse until repaired properly at increased expense. We are very eager to learn of the reason for the derailment after the investigation as we need to be assured that TCry is adequately maintaining the tracks we rely so heavily on for our business.

Thanks,

Dirk Martin

Sr. Director Logistics | Supply Chain
8701 W Gage Blvd Kennewick, WA 99336-1034
m +1 940.453.6661
www.lambweston.com



From: David Billetdeaux <david@portofbenton.com>
Sent: Friday, July 31, 2020 9:49 AM
To: Martin, Dirk <Dirk.Martin@lambweston.com>
Cc: Diahann Howard <dhoward@portofbenton.com>
Subject: RE: Invoice 11470 from Tri-City Railroad Company, LLC

[FROM EXTERNAL SOURCE]

Mr. Martin,

Thank you for providing your comments regarding the Port's tenant, TCRY's Supp. 1 and Proposed Supp. 5. The Port's lease with TCRY requires the Port to notify its tenant of any complaints the Port receives concerning the tenant's operations, rates, or tariffs. The lease also says that the Port will attempt to negotiate a resolution between the complainant and the tenant. If a resolution is not possible, the matter must be referred to the United States Surface Transportation Board ("STB").

The Port is unable to resolve your complaint because it is not aware of any legal authority under which TCRY can assess fees upon entities that do not operate on the rail line or are not TCRY customers. The laws that govern railroad tariffs contemplate privity between the entity charging the a fee and the entity against which charges will be assessed. However, the STB, not the Port, is the regulatory body that decides the validity of railroad tariffs. Therefore, under the lease, this matter must be referred to the STB.

Best regards,

David J. Billetdeaux | Port of Benton, Attorney

3250 Port of Benton Blvd. | Richland, WA 99354

509. 375. 3060 | Office

509. 375. 5287 | Fax

509. 578. 6189 | Mobile

Email: david@portofbenton.com

This email may contain privileged or confidential information disclosed only to the addressee. If you have received this email in error, do not copy or distribute it to other persons not authorized to receive it. Please call the sender at 509.375.3060 to make arrangements for the document to be retrieved or destroyed. Any use, copying, retention or disclosure by any person other than the intended recipient or the intended recipient's designees is strictly prohibited. Warning: Although the Port of Benton has taken reasonable precautions to ensure no viruses are present in this email, the Port shall not accept responsibility for any loss or damage arising from the use of this email or attachments.

Disclaimer: Public documents and records are available to the public as provided under the Washington State Public Records Act (RCW 42.56). This e-mail may be considered subject to the Public Records Act and may be disclosed to a third-party requestor.

CONFIDENTIALITY NOTICE:

This message and any attachments are solely for the use of the individual or entity to which this message is addressed and contains information that is confidential. If the reader of this message is not the intended recipient, you are hereby notified that any review, re-transmission, disclosure, copying, distribution or the taking of any action in reliance on the contents of this communication by persons or entities other than the intended recipient is strictly prohibited. If you have received this message in error, please contact the sender and delete the material from any computer.



Tri-City Railroad Company, LLC
P.O. Box 6000
Kennewick, WA 99336

Invoice

Date	Invoice #
7/23/2020	11470

Bill To		Terms	
Lamb Weston Plant 8701 W. Gage Blvd. Kennewick, WA 99336		Due upon receipt	
Quantity	Description	Rate	Amount
211	Track Maintenance charges assessed on oil tank cars that entered the TCRY at Richland Connection in Kennewick, WA for the period of January 16, 2020 - June 30, 2020 - manifest cars	95.00	20,045.00
	Charges assessed per Miscellaneous Charges Tariff Supplement 1 Effective September 18, 2018 and Approved by Port of Benton January 16, 2020.		

Amounts not paid within terms are subject to a 5% late fee and 1.5% interest per month .

Payments/Credits	\$0.00
-------------------------	--------

Invoice Balance	\$20,045.00
------------------------	-------------

E-mail

lisaanderson@tcry.com

EXHIBIT 7

Marks, Justin J.

From: dkyllo@commoditiesplus.com
Sent: Tuesday, July 7, 2020 12:51 PM
To: david@portofbenton.com
Cc: dhoward@portofbenton.com
Subject: FW: Invoice 11458 from Tri-City Railroad Company, LLC
Attachments: ATT00001.htm; Inv_11458_from_TriCity_Railroad_Company_LLC_44308.pdf

Mr. Billetdeaux,

The attached is an invoice from the TCRY claiming its right to charge a tariff for each rail car that travels on the POB tracks. In my previous complaint regarding such I stated that CWCP has no contracts, agreements or working relationship of any kind with the TCRY. This is obviously an attempt to gain revenue from any avenue or source. Our rail cars are delivered to our track by either the BNSF or the UPRR and CWCP does not have any responsibility or ownership of cars until they are spotted on our tracks. I feel quite confident that the TCRY has had no luck in getting either the BN or UP to pay them any money so they are attempting to go after someone they feel have far less clout and ability to fight. CWCP will not be accepting or pay any invoice from the TCRY.

I am unaware of any tariffs approved by the POB for the TCRY to apply such charges. CWCP rejects any such charges. Please accept this complaint as we recognize the POB as the governing entity and look to the POB to resolve this matter.

Please call me to discuss:

509-994-5968

Dennis Kylo

Pres. - CWCP

From: Lisa Anderson <lisaanderson@tcry.com>
Sent: Friday, July 3, 2020 3:43 PM
To: Dennis Kylo <dkyllo@commoditiesplus.com>; CW CP <cwcp@scale@gmail.com>; chad@cwcorn.com; charles@cwcorn.com; Monica Bernhardt <monica@paulsoncommodities.com>
Subject: Invoice 11458 from Tri-City Railroad Company, LLC

To Whom it May Concern:

Your company has been identified as a local rail user of the TCRY trackage.

As such, your company has been determined to be the responsible party per the Tri-City Railroad Company Miscellaneous Charges Tariff Supplement 1 Item 5 Railroad Maintenance Charge. A link to the posted Port of Benton approved tariff is provided for your reference as follows:

https://7ce984e5-d1b9-4174-a13a-b4f0a7e40a17.filesusr.com/ugd/a6d54b_b43a2eb19e5a45e3afd2c119eac335c1.pdf

The subject Tariff has been posted on our website at www.tcry.com since 20 days prior to its effective date of September 18, 2018.

If you are in need of additional information in order to facilitate payment processing please give us a call at (509) 371-8313.

If you have a complaint regarding this tariff please notify the Port of Benton. They can be reached at (509) 375-3060.

Please remit payment per the terms of the invoice. If you need to make payment arrangements, please call (509) 371-8313 in order to do so.

We look forward to being able to continue to provide you with a safe and serviceable railroad for you to continue to utilize so that your business may continue to grow and prosper.

Thank you.



Lisa Anderson, Corporate Secretary
Executive Vice President
PO Box 6000, Kennewick, WA 99336
Cell 360.239.9067 | Fax 509.582.4964
TCRY.com

Total Control Panel

[Login](#)

To: dkyllo@commoditiesplus.com

Message Score: 50

High (60): **Pass**

From: lisaanderson@tcry.com

My Spam Blocking Level: High

Medium (75): **Pass**

Low (90): **Pass**

[Block](#) this sender

[Block](#) tcry.com

This message was delivered because the content filter score did not exceed your filter level.

Total Control Panel

[Login](#)

To: dkyllo@commoditiesplus.com

Message Score: 50

High (60): **Pass**

From: lisaanderson@tcry.com

My Spam Blocking Level: High

Medium (75): **Pass**

Low (90): **Pass**

[Block](#) this sender

[Block](#) tcry.com

This message was delivered because the content filter score did not exceed your filter level.

Marks, Justin J.

From: David Billetdeaux <david@portofbenton.com>
Sent: Thursday, June 25, 2020 5:20 PM
To: Holly Lynch
Subject: Fwd: Proposed Tariff from Tri-City Railroad

David J. Billetdeaux | Port of Benton, Attorney
[3250 Port of Benton Blvd. | Richland, WA 99354](#)
[509. 375. 3060](#) | Office
[509. 375. 5287](#) | Fax
509. 578. 6189 | Mobile
Email: david@portofbenton.com

This email may contain privileged or confidential information disclosed only to the addressee. If you have received this email in error, do not copy or distribute it to other persons not authorized to receive it. Please call the sender at [509.375.3060](tel:509.375.3060) to make arrangements for the document to be retrieved or destroyed. Any use, copying, retention or disclosure by any person other than the intended recipient or the intended recipient's designees is strictly prohibited. Warning: Although the Port of Benton has taken reasonable precautions to ensure no viruses are present in this email, the Port shall not accept responsibility for any loss or damage arising from the use of this email or attachments.

Begin forwarded message:

From: Dennis Kylo <dennisk@cwcorn.com>
Date: June 25, 2020 at 1:17:42 PM PDT
To: David Billetdeaux <david@portofbenton.com>
Cc: Management <management@cwcorn.com>
Subject: RE: Proposed Tariff from Tri-City Railroad

Sir, Central Washington Corn Processors, rejects any such tariff from the TCRY. CWCP is served by either the BNSF or the UPRR and all services provided to us are supplied by the delivering carrier. CWCP has no contracts or agreements of any kind with the TCRY nor do we see such a need in the future. Please accept this complaint as our denial of such liability on our part. We view this as yet another attempt to extract revenue from customers in the area.

Thank You,
Dennis Kylo
CWCP – Pres.
509-994-5968

From: David Billetdeaux <david@portofbenton.com>
Sent: Tuesday, June 23, 2020 11:45 AM
To: bill.friend@henningsen.com; Duffy, Sue <Sue.Duffy@lambweston.com>; kbaumgardner@corrconin.com; hkintzley@CI.RICHLAND.WA.US; Dennis Kylo <dennisk@cwcorn.com>; Sanders, Brad <Brad.Sanders@lambweston.com>; katyconlan@packagingcorp.com; jdoyle@delhur.com; Justin Barager <jbarager@up.com>; egottschalk@preferredfreezer.com; Rugema, Jill M <Jill.Rugema@BNSF.com>
Subject: Proposed Tariff from Tri-City Railroad

All,

Attached, please find a proposed tariff from TCRY. The Port has asked TCRY a number of clarifying questions and awaits responses as of now. In the meantime, the Port invites any comments or questions you may have in regard to this tariff. Please note that although the tariff states, "The Track Use Fee has been reviewed and approved by the Port of Benton to ensure its compliance with the Port of Benton's agreements with the United States," the Port is doing our due diligence to thoroughly review the document and has not approved the Miscellaneous Charge/Track Use Fee.

If anyone notices a shipper, or preferred contact, has been left off this list or has updated contact info, please let me know.

Thank you,

David J. Billetdeaux | Port of Benton, Attorney

3250 Port of Benton Blvd. | Richland, WA 99354

509. 375. 3060 | Office

509. 375. 5287 | Fax

509. 578. 6189 | Mobile

Email: david@portofbenton.com

This email may contain privileged or confidential information disclosed only to the addressee. If you have received this email in error, do not copy or distribute it to other persons not authorized to receive it. Please call the sender at 509.375.3060 to make arrangements for the document to be retrieved or destroyed. Any use, copying, retention or disclosure by any person other than the intended recipient or the intended recipient's designees is strictly prohibited. Warning: Although the Port of Benton has taken reasonable precautions to ensure no viruses are present in this email, the Port shall not accept responsibility for any loss or damage arising from the use of this email or attachments.

Disclaimer: Public documents and records are available to the public as provided under the Washington State Public Records Act (RCW 42.56). This e-mail may be considered subject to the Public Records Act and may be disclosed to a third-party requestor.



Tri-City Railroad Company, LLC

P. O. Box 6000
Kennewick, WA 99336

Invoice

Date	Invoice #
7/3/2020	11458

Bill To
Central Washington Corn Processors 3334 Logston Blvd. Richland, WA 99354

Terms
Due upon receipt

Quantity	Description	Rate	Amount
	Track Maintenance charges assessed on cars that entered the TCRY at Richland Connection in Kennewick, WA for the following period:		
149	September 18, 2018 - December 31, 2018 - manifest cars	95.00	14,155.00
404	October 1, 2018 - October 31, 2018 - unit train cars	95.00	38,380.00
410	November 1, 2018 - November 30, 2018 - unit train cars	95.00	38,950.00
403	December 1, 2018 - December 31, 2018 - unit train cars	95.00	38,285.00
308	January 1, 2019 - January 31, 2019 - unit train cars	95.00	29,260.00
97	February 1, 2019 - February 28, 2019 - unit train cars	95.00	9,215.00
310	March 1, 2019 - March 31, 2019 - unit train cars	95.00	29,450.00
616	April 1, 2019 - April 30, 2019 - unit train cars	95.00	58,520.00
430	May 1, 2019 - May 31, 2019 - unit train cars	95.00	40,850.00
393	June 1, 2019 - June 30, 2019 - unit train cars	95.00	37,335.00
543	July 1, 2019 - July 31, 2019 - unit train cars	95.00	51,585.00
408	August 1, 2019 - August 31, 2019 - unit train cars	95.00	38,760.00
427	September 1, 2019 - September 30, 2019 - unit train cars	95.00	40,565.00
399	October 1, 2019 - October 31, 2019 - unit train cars	95.00	37,905.00
422	November 1, 2019 - November 30, 2019 - unit train cars	95.00	40,090.00
429	December 1, 2019 - December 31, 2019 - unit train cars	95.00	40,755.00
413	January 1, 2020 - January 31, 2020 - unit train cars	95.00	39,235.00
292	February 1, 2020 - February 29, 2020 - unit train cars	95.00	27,740.00
542	March 1, 2020 - March 8, 2020 - unit train cars	95.00	51,490.00
510	April 1, 2020 - April 30, 2020 - unit train cars	95.00	48,450.00
216	May 1, 2020 - May 31, 2020 - unit train cars	95.00	20,520.00
312	June 1, 2020 - June 30, 2020 - unit train cars	95.00	29,640.00
	Charges assessed per Miscellaneous Charges Tariff Supplement 1 Effective September 18, 2018.		

Amounts not paid within terms are subject to a 5% late fee and 1.5% interest per month .

Balance Due \$801,135.00

EXHIBIT 8

Marks, Justin J.

From: Rydel Peterson <rydel@tcry.com>
Sent: Friday, July 3, 2020 6:32 PM
To: David Billetdeaux
Subject: Re: Miscellaneous Charges Tariff Proposed Supplement

David,

Thank you for providing examples of users of the railroad that would be subject to TCRY's Miscellaneous Charges Tariff Supplement 1 and the applicable \$95 per car Railroad Maintenance Charge.

TCRY requests the Port's support in collecting on the Railroad Maintenance Charge from the responsible party now clearly established as the users of the railroad.

This effort in conjunction with the Port will help ensure TCRY's success in providing a safe and serviceable railroad for many years to come that continues to be used as an economic development tool for the region.

Thank you,

Rydel

Sent from my iPhone

On Jul 1, 2020, at 2:32 PM, David Billetdeaux <david@portofbenton.com> wrote:

Dear Rydel:

Pursuant to Lease Paragraph 7.2, the Port is notifying TCRY that it has received the following complaints concerning TCRY's Proposed Tariff:

- From DelHur Industries: "DelHur does all of its rail business directly with BNSF. All applicable tariff charges to get the freight to my siding are already included in the BNSF rates. I am not in agreement with or willing to pay an additional Tariff to TCRY."
- From Central Washington Corn Processors: "CWCP is served by either the BNSF or the UPRR and all services provided to us are supplied by the delivering carrier. CWCP has no contracts or agreements of any kind with the TCRY nor do we see such a need in the future. Please accept this complaint as our denial of such liability on our part. We view this as yet another attempt to extract revenue from customers in the area."

As you know, under Lease Paragraph 7.2 and 7.2.1, the Port must attempt to resolve these complaints. With that in mind, please provide TCRY's response to the above complaints.

Additionally, as outlined in my June 15 and June 23 emails to you, the Port requires additional information, which TCRY has not provided, to conduct the due diligence necessary to approve the Proposed Tariff under Lease Paragraph 7.1. While I do not agree with your interpretation of Paragraph 7.1, I will note that the Indenture requires tariffs be "fair, reasonable, and nondiscriminatory." It also requires the Southern Connection be used to "create economic and employment opportunities in the

community served by the Port..." and requires the line be "used and maintained for the purposes for which it was conveyed [to the Port]."

The Port reiterates its request for TCRY to identify with specificity the entities that would be subject to the Proposed Tariff. The definition of a "Local Rail User" is vague and ambiguous and your June 24 email further muddies the issue. Specifically, in responding to my question about application of the Proposed Tariff, you note that "if Preferred Freezer met the definition of a Local Rail User..." From that response, it appears TCRY itself does not know what constitutes a Local Rail User, which cannot be true since TCRY is the entity imposing the Proposed Tariff.

Similarly, in your June 24 email you said that cars enter the Southern Connection "either loaded or empty, and some, as I mentioned, are not even destined for Richland." If TCRY does not provide direct services for the entities shipping or receiving goods on the Southern Connection, and not all cars that enter the trackage are bound for an entity located on the trackage, how will TCRY determine what cars are subject to the Proposed Tariff and what entities should be charged?

Finally, you asked about the Port's policies and procedures for responding to TCRY tariff requests. Under RCW 53.12.270 and Port Resolution No. 20-01, the Port delegates certain authority to its Executive Director to carry out and implement the objectives of the Port Commission. As described in Exhibit A to Resolution No. 20-01, the Executive Director generally oversees the day-to-day Port operations and regularly informs and consults with the Commission regarding significant information and business transactions. The Port works within the framework described in Resolution 20-01 when it receives a request from TCRY to approve a tariff under Lease Section 7.1. Initially, the Executive Director and/or the Commission-appointed Port Counsel inform the Commission of the request during the executive session at the next-occurring Commission meeting. Additionally, the Executive Director or, when appropriate, Port Counsel, reviews the request to determine whether it complies with the duties imposed upon the Port by the Lease, the Indenture, statute, and/or other legal authority, and if necessary, seek additional information to complete that analysis. The Port will also work with outside counsel or consultants where necessary to conduct its analysis. The Executive Director and/or Port Counsel consults with and informs the Commission as needed throughout the process. A copy of Resolution No. 20-01 is attached for your convenience.

Best regards,

David J. Billetdeaux | Port of Benton, Attorney

3250 Port of Benton Blvd. | Richland, WA 99354

509. 375. 3060 | Office

509. 375. 5287 | Fax

509. 578. 6189 | Mobile

Email: david@portofbenton.com

This email may contain privileged or confidential information disclosed only to the addressee. If you have received this email in error, do not copy or distribute it to other persons not authorized to receive it. Please call the sender at 509.375.3060 to make arrangements for the document to be retrieved or destroyed. Any use, copying, retention or disclosure by any person other than the intended recipient or the intended recipient's designees is strictly prohibited. Warning: Although the Port of Benton has taken reasonable precautions to ensure no viruses are present in this email, the Port shall not accept responsibility for any loss or damage arising from the use of this email or attachments.

Disclaimer: Public documents and records are available to the public as provided under the Washington State Public Records Act (RCW 42.56). This e-mail may be considered subject to the Public Records Act and may be disclosed to a third-party requestor.

From: Rydel Peterson <rydel@tcry.com>
Sent: Wednesday, June 24, 2020 9:10 AM
To: David Billetdeaux <david@portofbenton.com>
Subject: Re: Miscellaneous Charges Tariff Proposed Supplement

David,

Section 7.1 states "The Tenant's use, operations, and maintenance of the tracks shall comply with the provisions of the Quit Claim Deed and Indenture from the United States of America through which the Port acquired title to the property. In addition, the Tenant shall comply with all laws, rules and regulations applicable to the Tenant's use, operation and maintenance of the property. Any tariffs imposed upon the use of the railroad by the Tenant shall be reasonable in light of the use of the railroad and shall be subject to the review and approval of the Port, to insure compliance with the Port's agreements with the United States."

I read that section at it's plain language to mean what it says, that TCRY tariffs "shall be subject to the review and approval of the Port, to insure compliance with the Port's agreements with the United States."

Reasonableness is determined by TCRY, not the Port. If a user of the railroad believes the tariff to be unreasonable then they have recourse under section 7.2 of the lease or they can go directly to the STB with their complaint.

The Port approved TCRY's Supplement 1 to its Miscellaneous Charges tariff. The pertinent language of the tariff states "A track charge of Ninety-Five Dollars (\$95) per car will be charged by TCRY on all cars that enter the TCRY at RICHLAND CONNECTION in Kennewick, Washington."

I'm not sure how you or the Port's consultant could not understand what the word "all" meant. As you know and I hope your consultant knows, the Port allows the BNSF and the UP to bring any and all cars across the TCRY, regardless if they are destined for a shipper or receiver located off of the TCRY line. You also know and I hope your consultants do as well that the TCRY trackage is essentially a dead end track, meaning that all cars that come in, either loaded or empty eventually come out, either loaded or empty, and some, as I mentioned, are not even destined for Richland.

The language of Supplement 1 was intentional and was intended to include all cars as it states.

TCRY is not withdrawing Supplement 1 as you seem to suggest, it is proposing to replace it with Supplement 5. Until the Port approves Supplement 5, Supplement 1 is in full force and effect and continues to accrue against the Port.

Given that the Port approved Supplement 1 and given that Supplement 1 included a maintenance charge of \$95 per railcar on all cars that enter TCRY trackage, TCRY utilized the \$95 per car on all cars and rolled it into the \$125 per car on all loaded cars. The difference in \$95 per car on all cars for maintenance and \$95 per car on all loaded cars for maintenance is actually less net revenue to TCRY for maintenance, but with the addition of the \$30 per loaded car to help cover the costs of the operation and

management of the railroad, it should even out.

I specifically told you the entities that would be subject to Supplement 5, which, again, would be all Local Rail Users as defined by the tariff to mean “any entity, person, or business that ships and/or receives railcar loads that traverse TCRY trackage.”

TCRY included, by way of example, reference to the Port of Benton Rail Plan and the Port of Benton and the City of Richland Rail Master Plan to help elucidate the definition of Local Rail User.

The BNSF and the UP do not ship or receive railcar loads that traverse TCRY trackage, unless you know something I don't. Please share if you do.

TCRY is working within the framework provided by the railroad lease and subsequently the Indenture. The railroad lease gives TCRY the right to establish tariffs and the Port the right to ensure their compliance with the Indenture. A major tenet of the Indenture was for the Port or its agent, in this case TCRY, to be able to charge money for the use of the railroad in order to develop revenue, to offset the costs of the operation and maintenance of the railroad.

TCRY's position remains the same as I've previously stated, it has a contractual right to set tariffs and it knows of no legal authority that would prevent it from establishing and collecting on Supplement 5. If the Port is able to locate that legal authority showing that Supplement 5 is somehow illegal or without basis, please share.

As to your hypothetical, if Preferred Freezer met the definition of a Local Rail User then it would be assessed a fee of \$125 per loaded railcar that it either shipped or received. Assuming that Preferred Freezer received the 10 loaded railcars from Iowa then it would be charged \$1,250 for those loaded railcars received. Assuming Preferred Freezer shipped the 15 loaded cars to Montana then it would be charged \$1,875 for those 15 car loads shipped.

I have attached approved Supplement 1, Supplement 5, and our previous correspondence regarding Supplement 5 to this email. As I have mentioned before, it certainly makes it much easier to follow a thread of communications on one subject if that thread is continued, versus starting a new one.

TCRY submitted to the Port Supplement 5 on June 8. The Port's first substantive response was on June 15, which TCRY responded to the following day. The Port followed up with a series of questions on June 23, most of which were previously answered on June 16. How long does the Port envision this process taking? What are the established Port policies and/or procedures that it follows in evaluating a TCRY tariff? As a public agency, I am sure the procedures/policy are approved by the Port Commission and are readily available to the public, let alone the Port's tenant who are subject to them.

To that end, TCRY requests that the Port provide TCRY with the Port's approved procedures/policy when evaluating TCRY's tariffs.

Thank you,

Rydel

On Tue, Jun 23, 2020 at 12:47 PM David Billetdeaux <david@portofbenton.com> wrote:

Rydel:

As you know, under section 7.1 of TCRY's lease, the Port must determine whether TCRY's Proposed Tariff is reasonable. To conduct that due diligence, the Port requires additional information, which I requested, but you have not provided. The Port will continue to do whatever research it can, but as explained below, the information I requested is central to the analysis that we have been advised is necessary to determine the reasonableness of the Proposed Tariff.

First, in your recent email, you explained that the current \$95 tariff is on all cars and that the Proposed Tariff is only on loaded cars. According to the Port's consultation with a rail industry expert, the industry standard is that user fees, like the \$95 tariff, are only assessed on loaded cars and our prior analysis and approval was based on that understanding. In other words, we approved that tariff believing it was to be assessed on loaded cars. Regardless, we have not received complaints and now that TCRY is withdrawing the tariff, this issue is moot. However, the Port's prior underlying analysis is relevant to TCRY's Proposed Tariff. Both the \$95 tariff and the Proposed Tariff are akin to user fees. And as I explained in my January 16, 2020 letter to TCRY, in evaluating the reasonableness of the \$95 per (loaded) car user fee, the Port looked at TCRY's maintenance costs (averaged over eight years) and divided those costs by car count information available to the Port. When the Port did that calculation, the result was \$63 per car. However, the Port noted discrepancies in the information provided and, based on the totality of the information, determined the \$95 was not unreasonable.

The Proposed Tariff is a more than 30% increase, which is why the Port sought an explanation for the increase. From your response, it appears that TCRY did not base the \$125 Proposed Tariff on any underlying data or calculation. Please correct me if that is not the case. Please also provide whatever data or calculations TCRY did rely upon in coming up with the dollar amount for the Proposed Tariff.

Second, I asked you to identify the entities subject to the proposed tariff. Rather than just tell me, you referred to the Port of Benton Rail Plan section 2.8 and the Port of Benton and City of Richland Rail Master Plan section 2.6. Those documents were not created within the context of tariffs, they do not define "local rail user," and not all the entities listed in those documents fall within the definition contained in the Proposed Tariff. For example, the cited sections of both documents identify the Port as a rail user located off the City's Horn Rapids Spur (because it owns a transload facility). But the Port does not ship or receive railcar loads that traverse the Southern Connection. Similarly, the cited sections in those documents generally discuss the shippers located off the Southern Connection and the Horn Rapids Spur, but do not discuss BNSF or UP. Yet, both Class I railroads appear to meet the Proposed Tariff's definition of local rail user. In short, your explanation did not answer my question. Please provide the names of the entities that TCRY believes would be subject to the Proposed Tariff.

Third, I asked for the legal authority, precedent, and/or industry standard that would authorize TCRY to assess charges upon non-TCRY customers. You did not provide a response. A similar issue came up in 2009 when the Port was conducting due diligence of a facility user fee tariff TCRY proposed (but withdrew before the Port completed its analysis). At that time, the Port's industry expert noted that TCRY could not collect fees from shippers because it was not performing any work for the shippers. Likewise, the CFRs that govern railroad tariffs contemplate privity between the entity charging a fee and the entity against which charges will be assessed. *See* 49 C.F.R. 1300 *et seq.* Thus, I am unaware of any framework under which TCRY could legally assess fees upon entities that are not TCRY customers – which is why I asked you to provide that framework or analysis.

Finally, how would the Proposed Tariff be assessed? To provide a hypothetical, let's say BNSF brought 10 loaded cars from an entity in Iowa to Preferred Freezer and then turned around brought 15 loaded cars from Preferred Freezer, bound for an entity Montana. Which entity or entities would be charged?

As I mentioned at the outset, the Port continues its due diligence, but needs the above information to complete its analysis. In the meantime, the Port will seek comment from the entities it understands would be affected by the Proposed Tariff.

Best regards,

David J. Billetdeaux | [Port of Benton](#), Attorney

3250 Port of Benton Blvd. | Richland, WA 99354

509. 375. 3060 | Office

509. 375. 5287 | Fax

509. 578. 6189 | Mobile

Email: david@portofbenton.com

This email may contain privileged or confidential information disclosed only to the addressee. If you have received this email in error, do not copy or distribute it to other persons not authorized to receive it. Please call the sender at 509.375.3060 to make arrangements for the document to be retrieved or destroyed. Any use, copying, retention or disclosure by any person other than the intended recipient or the intended recipient's designees is strictly prohibited. Warning: Although the Port of Benton has taken reasonable precautions to ensure no viruses are present in this email, the Port shall not accept responsibility for any loss or damage arising from the use of this email or attachments.

Disclaimer: Public documents and records are available to the public as provided under the Washington State Public Records Act (RCW 42.56). This e-mail may be considered subject to the Public Records Act and may be disclosed to a third-party requestor.

<20-01.pdf>

EXHIBIT 9



August 12, 2020

Dennis Kylo
Central Washington Corn Processors
3334 Logston Blvd.
Richland, WA
99354

Delivered via US Mail and electronically via dkyllo@commoditiesplus.com

Re: Past Due invoice from July 23, 2020

Mr. Kylo,

I currently represent Tri-City Railroad ("TCRY") as its outside general legal counsel.

Central Washington Corn Processors ("CWCP") was issued an invoice from TCry on July 23, 2020 in the amount of \$72,580.00. The invoice was based upon TCry's Miscellaneous Charges Tariff Supplement 1 which became effective September 18, 2018 but was not approved by the Port of Benton ("Port") until January 16, 2020.

CWCP is the responsible party owing the \$95 per car maintenance charge found in Supplement 1. Users of the railroad have been delineated, multiple times in the Port of Benton Rail Plan and Rail Master Plan.



On July 23, 2020, TCRY gave CWCP proper notice of its tariff as required by law. Since then, CWCP has been on notice of TCRY's Miscellaneous Charges Tariff Supplement 1 item number 5 titled "Railroad Maintenance Charge" and its application to CWCP railcar shipments that traverse TCRY trackage.

If any question exists as to CWCP's responsibility to pay the Railroad Maintenance Charge from July 23, 2020 forward, I would request your legal counsel review the legal authority cited herein.

A properly published tariff schedule has the force and effect of law, is the legal rate for the stated purposes, and binds the shipper and carrier alike. Illinois Cent. Gulf R. Co. v. Golden Triangle Wholesale Gas Co., 586 F.2d 588 (5th Cir. 1978); Farley Terminal Co., Inc. v. Atchison, T. & S. F. Ry. Co., 522 F.2d 1095 (9th Cir. 1975). In re Couture Hotel Corporation, 554 B.R. 369 (Bankr. N.D. Tex. 2016).

Tariffs play a different role today than they did under the I.C.C., the STB's predecessor. Under the I.C.C. and filed-rate doctrine, carriers were required to file tariff rates at the agency and parties were deemed to have constructive knowledge of the terms and rates set out in that filed tariff. Davel Communications, Inc. v. Qwest Corp., 460 F.3d 1075 (9th Cir. 2006).

Today, carriers are no longer required to file tariffs with the Surface Transportation Board. Therefore, "*a shipper or receiver of rail cars to whom the rail carrier has given actual notice of its own[] tariff will be deemed to have accepted the rail carrier's[] terms whenever it accepts the cars.*" Demurrage Liability, EP 707 (STB Served April 14, 2014) (discussing notice of demurrage tariffs). Regarding what



notice is sufficient to constitute actual notice, the STB has stated that carriers are to use *“electronic responses and notices when both parties have the requisite capabilities. Otherwise the notice should be written.”* Disclosure, Pub. & Not. Of Change of Rates—Rail Carriage, 1 S.T.B. 153, 159 (1996) (carriers must make *“active, or positive, response or notification”* of rate information on request of shipper, rather than using *“electronic billboards or other ‘passive’ forms of notification”*).

As such, please find attached TCRY's most recent invoice reflecting CWCP's accrued charges from July 23, 2020 thru today. No amounts are owed for the tariff charges prior to July 23, 2020. If any questions or issues remain, please have your legal counsel contact me to discuss. Otherwise we look forward to your payment.

Thank you,

A handwritten signature in black ink, appearing to read 'Rydel Peterson'.

Rydel Peterson

Attorney

Montana Bar # 55790498

Washington Bar # 55705

EXHIBIT 10

Marks, Justin J.

From: david@portofbenton.com
Sent: Monday, June 15, 2020 6:53 PM
To: rydel@tcry.com
Subject: RE: Supplement 5.pdf

Rydel:

As requested, the Port is working with its attorneys and industry experts to review TCRY's proposed tariff. To complete that analysis, the Port requests TCRY provide the following information:

1. Please provide the rationale behind the \$125 per-car fee as well as any industry standard, legal analysis, or other documentation supporting the proposed amount.
2. Please identify the entities subject to the proposed tariff. Although it is not entirely clear, it appears the proposed tariff is to be assessed directly upon the shippers located on the Southern Connection, and not the railroads who operate on the line. However, please confirm. Please also confirm which shippers would be subject to the proposed tariff.
3. If the proposed tariff is meant to be assessed on the shippers, please provide the Port with the legal authority, precedent, and/or industry analysis that would authorize the assessment of charges upon non-TCRY customers. Similarly, please explain how TCRY will accurately determine who to charge and how much to charge if the subject cars are handled by BNSF and/or UP.

I look forward to receiving the above information, which will enable to Port to conducts its analysis of the proposed tariff.

David J. Billetdeaux | Port of Benton, Attorney
3250 Port of Benton Blvd. | Richland, WA 99354
509. 375. 3060 | Office
509. 375. 5287 | Fax
509. 578. 6189 | Mobile
Email: david@portofbenton.com

This email may contain privileged or confidential information disclosed only to the addressee. If you have received this email in error, do not copy or distribute it to other persons not authorized to receive it. Please call the sender at 509.375.3060 to make arrangements for the document to be retrieved or destroyed. Any use, copying, retention or disclosure by any person other than the intended recipient or the intended recipient's designees is strictly prohibited. Warning: Although the Port of Benton has taken reasonable precautions to ensure no viruses are present in this email, the Port shall not accept responsibility for any loss or damage arising from the use of this email or attachments.

Disclaimer: Public documents and records are available to the public as provided under the Washington State Public Records Act (RCW 42.56). This e-mail may be considered subject to the Public Records Act and may be disclosed to a third-party requestor.

From: Rydel Peterson <rydel@tcry.com>
Sent: Monday, June 8, 2020 4:58 PM
To: David Billetdeaux <david@portofbenton.com>
Subject: Supplement 5.pdf

David,

Please find attached Supplement 5 to TCRY's Miscellaneous Charges Tariff.

The Port's prompt review and approval is appreciated.

Thank you,

Rydel

Sent from my iPhone

EXHIBIT 11

Marks, Justin J.

From: David Billetdeaux <david@portofbenton.com>
Sent: Thursday, June 25, 2020 6:56 PM
To: Holly Lynch
Subject: Fwd: Proposed Tariff from Tri-City Railroad email dated June 23,2020

See below.

David J. Billetdeaux | Port of Benton, Attorney
[3250 Port of Benton Blvd. | Richland, WA 99354](#)
[509. 375. 3060](#) | Office
[509. 375. 5287](#) | Fax
509. 578. 6189 | Mobile
Email: david@portofbenton.com

This email may contain privileged or confidential information disclosed only to the addressee. If you have received this email in error, do not copy or distribute it to other persons not authorized to receive it. Please call the sender at [509.375.3060](tel:509.375.3060) to make arrangements for the document to be retrieved or destroyed. Any use, copying, retention or disclosure by any person other than the intended recipient or the intended recipient's designees is strictly prohibited. Warning: Although the Port of Benton has taken reasonable precautions to ensure no viruses are present in this email, the Port shall not accept responsibility for any loss or damage arising from the use of this email or attachments.

Begin forwarded message:

From: John Doyle <jdoyle@delhur.com>
Date: June 25, 2020 at 3:54:03 PM PDT
To: David Billetdeaux <david@portofbenton.com>
Subject: Proposed Tariff from Tri-City Railroad email dated June 23,2020

David,

DelHur does all of its rail business directly with BNSF. All applicable tariff charges to get the freight to my siding are already included in the BNSF rates.

I am not in agreement with or willing to pay an additional Tariff to TCRY.

Feel free to contact me if you have any questions.

Thank you,

John

John M. Doyle
DelHur Industries, Inc.
30607 Oldfield Street
Hermiston, OR 97838
541.567.8693 x2

509.371.0678 Richland Office

509.727.7955 Cell

www.delhur.com

PLEASE NOTE: This message, including any attachments, may include confidential and/or inside information. Any distribution or use of this communication by anyone other than the intended recipient is strictly prohibited and may be unlawful. If you are not the intended recipient, please notify the sender by replying to this message and then delete it from your system.

EXHIBIT 12



July 7, 2020

Diahann Howard
Executive Director
Port of Benton
3250 Port of Benton Blvd
Richland, WA 99354

VIA: dhoward@portofbenton.com

Dear Ms Howard:

We have become aware of Tri Cities Rail (TCRY) intent to implement a "Track Use Fee" per Miscellaneous Charges Supplement 5 dated June 8, 2020 and have objection to paying such fees. We understand that the Port of Benton (Port) has an existing agreement with TCRY, which provides for adequate maintenance on track that our rail traffic utilize enroot to our site at 3003 Kingsgate Way, Richland, WA, 99354.

We have an existing Industry Track Agreement as well as a freight letter agreement with Union Pacific Railroad, which moves our traffic in both line-haul and local service. We see no value added on the part of TCRY over and above the maintenance provided per above reference. Therefore, we do not see this tariff application as having merit and believe we have a reasonable complaint to dispute it.

Sincerely,

A handwritten signature in black ink, appearing to read "Ross Corthell". The signature is written in a cursive, flowing style.

Ross Corthell
Vice President – Transportation

Cc: David J. Billetdeaux @ david@portofbenton.com



Tri-City Railroad Company, LLC
P.O. Box 6000
Kennewick, WA 99336

Invoice

Date	Invoice #
8/12/2020	11489

Bill To
Central Washington Corn Processors 3334 Logston Blvd. Richland, WA 99354

Terms
Due upon receipt

Quantity	Description	Rate	Amount
31	Track Maintenance charges assessed on cars that entered the TCRY at Richland Connection in Kennewick, WA for the period of July 23, 2020 to July 31, 2020 - manifest cars	95.00	2,945.00
110	Track Maintenance charges assessed on cars that entered the TCRY at Richland Connection in Kennewick, WA for the period of July 23, 2020 to July 31, 2020 - unit train cars	95.00	10,450.00
	Charges assessed per Miscellaneous Charges Tariff Supplement 1 Effective September 18, 2018 and Approved by Port of Benton January 16, 2020.		

Amounts not paid within terms are subject to a 5% late fee and 1.5% interest per month .

Payments/Credits	\$0.00
-------------------------	--------

Invoice Balance	\$13,395.00
------------------------	-------------

E-mail

lisaanderson@tcry.com

EXHIBIT 13

Marks, Justin J.

From: David Billetdeaux <david@portofbenton.com>
Sent: Wednesday, July 1, 2020 4:32 PM
To: Rydel Peterson
Subject: RE: Miscellaneous Charges Tariff Proposed Supplement
Attachments: 20-01.pdf

Dear Rydel:

Pursuant to Lease Paragraph 7.2, the Port is notifying TCRY that it has received the following complaints concerning TCRY's Proposed Tariff:

- From DelHur Industries: "DelHur does all of its rail business directly with BNSF. All applicable tariff charges to get the freight to my siding are already included in the BNSF rates. I am not in agreement with or willing to pay an additional Tariff to TCRY."
- From Central Washington Corn Processors: "CWCP is served by either the BNSF or the UPRR and all services provided to us are supplied by the delivering carrier. CWCP has no contracts or agreements of any kind with the TCRY nor do we see such a need in the future. Please accept this complaint as our denial of such liability on our part. We view this as yet another attempt to extract revenue from customers in the area."

As you know, under Lease Paragraph 7.2 and 7.2.1, the Port must attempt to resolve these complaints. With that in mind, please provide TCRY's response to the above complaints.

Additionally, as outlined in my June 15 and June 23 emails to you, the Port requires additional information, which TCRY has not provided, to conduct the due diligence necessary to approve the Proposed Tariff under Lease Paragraph 7.1. While I do not agree with your interpretation of Paragraph 7.1, I will note that the Indenture requires tariffs be "fair, reasonable, and nondiscriminatory." It also requires the Southern Connection be used to "create economic and employment opportunities in the community served by the Port..." and requires the line be "used and maintained for the purposes for which it was conveyed [to the Port]."

The Port reiterates its request for TCRY to identify with specificity the entities that would be subject to the Proposed Tariff. The definition of a "Local Rail User" is vague and ambiguous and your June 24 email further muddies the issue. Specifically, in responding to my question about application of the Proposed Tariff, you note that "if Preferred Freezer met the definition of a Local Rail User..." From that response, it appears TCRY itself does not know what constitutes a Local Rail User, which cannot be true since TCRY is the entity imposing the Proposed Tariff.

Similarly, in your June 24 email you said that cars enter the Southern Connection "either loaded or empty, and some, as I mentioned, are not even destined for Richland." If TCRY does not provide direct services for the entities shipping or receiving goods on the Southern Connection, and not all cars that enter the trackage are bound for an entity located on the trackage, how will TCRY determine what cars are subject to the Proposed Tariff and what entities should be charged?

Finally, you asked about the Port's policies and procedures for responding to TCRY tariff requests. Under RCW 53.12.270 and Port Resolution No. 20-01, the Port delegates certain authority to its Executive Director to carry out and implement the objectives of the Port Commission. As described in Exhibit A to Resolution No. 20-01, the Executive Director generally oversees the day-to-day Port operations and regularly informs and consults with the Commission regarding significant information and business transactions. The Port works within the framework described in Resolution 20-01 when it receives a request from TCRY to approve a tariff under Lease Section 7.1. Initially, the Executive Director and/or

the Commission-appointed Port Counsel inform the Commission of the request during the executive session at the next-occurring Commission meeting. Additionally, the Executive Director or, when appropriate, Port Counsel, reviews the request to determine whether it complies with the duties imposed upon the Port by the Lease, the Indenture, statute, and/or other legal authority, and if necessary, seek additional information to complete that analysis. The Port will also work with outside counsel or consultants where necessary to conduct its analysis. The Executive Director and/or Port Counsel consults with and informs the Commission as needed throughout the process. A copy of Resolution No. 20-01 is attached for your convenience.

Best regards,

David J. Billetdeaux | Port of Benton, Attorney

3250 Port of Benton Blvd. | Richland, WA 99354

509. 375. 3060 | Office

509. 375. 5287 | Fax

509. 578. 6189 | Mobile

Email: david@portofbenton.com

This email may contain privileged or confidential information disclosed only to the addressee. If you have received this email in error, do not copy or distribute it to other persons not authorized to receive it. Please call the sender at 509.375.3060 to make arrangements for the document to be retrieved or destroyed. Any use, copying, retention or disclosure by any person other than the intended recipient or the intended recipient's designees is strictly prohibited. Warning: Although the Port of Benton has taken reasonable precautions to ensure no viruses are present in this email, the Port shall not accept responsibility for any loss or damage arising from the use of this email or attachments.

Disclaimer: Public documents and records are available to the public as provided under the Washington State Public Records Act (RCW 42.56). This e-mail may be considered subject to the Public Records Act and may be disclosed to a third-party requestor.

From: Rydel Peterson <rydel@tcry.com>

Sent: Wednesday, June 24, 2020 9:10 AM

To: David Billetdeaux <david@portofbenton.com>

Subject: Re: Miscellaneous Charges Tariff Proposed Supplement

David,

Section 7.1 states "The Tenant's use, operations, and maintenance of the tracks shall comply with the provisions of the Quit Claim Deed and Indenture from the United States of America through which the Port acquired title to the property. In addition, the Tenant shall comply with all laws, rules and regulations applicable to the Tenant's use, operation and maintenance of the property. Any tariffs imposed upon the use of the railroad by the Tenant shall be reasonable in light of the use of the railroad and shall be subject to the review and approval of the Port, to insure compliance with the Port's agreements with the United States."

I read that section at it's plain language to mean what it says, that TCRY tariffs "shall be subject to the review and approval of the Port, to insure compliance with the Port's agreements with the United States."

Reasonableness is determined by TCRY, not the Port. If a user of the railroad believes the tariff to be unreasonable then they have recourse under section 7.2 of the lease or they can go directly to the STB with their complaint.

The Port approved TCRY's Supplement 1 to its Miscellaneous Charges tariff. The pertinent language of the tariff states "A track charge of Ninety-Five Dollars (\$95) per car will be charged by TCRY on all cars that enter the TCRY at RICHLAND CONNECTION in Kennewick, Washington."

I'm not sure how you or the Port's consultant could not understand what the word "all" meant. As you know and I hope your consultant knows, the Port allows the BNSF and the UP to bring any and all cars across the TCRY, regardless if they are destined for a shipper or receiver located off of the TCRY line. You also know and I hope your consultants do as well that the TCRY trackage is essentially a dead end track, meaning that all cars that come in, either loaded or empty eventually come out, either loaded or empty, and some, as I mentioned, are not even destined for Richland.

The language of Supplement 1 was intentional and was intended to include all cars as it states.

TCRY is not withdrawing Supplement 1 as you seem to suggest, it is proposing to replace it with Supplement 5. Until the Port approves Supplement 5, Supplement 1 is in full force and effect and continues to accrue against the Port.

Given that the Port approved Supplement 1 and given that Supplement 1 included a maintenance charge of \$95 per railcar on all cars that enter TCRY trackage, TCRY utilized the \$95 per car on all cars and rolled it into the \$125 per car on all loaded cars. The difference in \$95 per car on all cars for maintenance and \$95 per car on all loaded cars for maintenance is actually less net revenue to TCRY for maintenance, but with the addition of the \$30 per loaded car to help cover the costs of the operation and management of the railroad, it should even out.

I specifically told you the entities that would be subject to Supplement 5, which, again, would be all Local Rail Users as defined by the tariff to mean "any entity, person, or business that ships and/or receives railcar loads that traverse TCRY trackage."

TCRY included, by way of example, reference to the Port of Benton Rail Plan and the Port of Benton and the City of Richland Rail Master Plan to help elucidate the definition of Local Rail User.

The BNSF and the UP do not ship or receive railcar loads that traverse TCRY trackage, unless you know something I don't. Please share if you do.

TCRY is working within the framework provided by the railroad lease and subsequently the Indenture. The railroad lease gives TCRY the right to establish tariffs and the Port the right to ensure their compliance with the Indenture. A major tenet of the Indenture was for the Port or its agent, in this case TCRY, to be able to charge money for the use of the railroad in order to develop revenue, to offset the costs of the operation and maintenance of the railroad.

TCRY's position remains the same as I've previously stated, it has a contractual right to set tariffs and it knows of no legal authority that would prevent it from establishing and collecting on Supplement 5. If the Port is able to locate that legal authority showing that Supplement 5 is somehow illegal or without basis, please share.

As to your hypothetical, if Preferred Freezer met the definition of a Local Rail User then it would be assessed a fee of \$125 per loaded railcar that it either shipped or received. Assuming that Preferred Freezer received the 10 loaded railcars from Iowa then it would be charged \$1,250 for those loaded railcars received. Assuming Preferred Freezer shipped the 15 loaded cars to Montana then it would be charged \$1,875 for those 15 car loads shipped.

I have attached approved Supplement 1, Supplement 5, and our previous correspondence regarding Supplement 5 to this email. As I have mentioned before, it certainly makes it much easier to follow a

thread of communications on one subject if that thread is continued, versus starting a new one.

TCRY submitted to the Port Supplement 5 on June 8. The Port's first substantive response was on June 15, which TCRY responded to the following day. The Port followed up with a series of questions on June 23, most of which were previously answered on June 16. How long does the Port envision this process taking? What are the established Port policies and/or procedures that it follows in evaluating a TCRY tariff? As a public agency, I am sure the procedures/policy are approved by the Port Commission and are readily available to the public, let alone the Port's tenant who are subject to them.

To that end, TCRY requests that the Port provide TCRY with the Port's approved procedures/policy when evaluating TCRY's tariffs.

Thank you,

Rydel

On Tue, Jun 23, 2020 at 12:47 PM David Billetdeaux <david@portofbenton.com> wrote:

Rydel:

As you know, under section 7.1 of TCRY's lease, the Port must determine whether TCRY's Proposed Tariff is reasonable. To conduct that due diligence, the Port requires additional information, which I requested, but you have not provided. The Port will continue to do whatever research it can, but as explained below, the information I requested is central to the analysis that we have been advised is necessary to determine the reasonableness of the Proposed Tariff.

First, in your recent email, you explained that the current \$95 tariff is on all cars and that the Proposed Tariff is only on loaded cars. According to the Port's consultation with a rail industry expert, the industry standard is that user fees, like the \$95 tariff, are only assessed on loaded cars and our prior analysis and approval was based on that understanding. In other words, we approved that tariff believing it was to be assessed on loaded cars. Regardless, we have not received complaints and now that TCRY is withdrawing the tariff, this issue is moot. However, the Port's prior underlying analysis is relevant to TCRY's Proposed Tariff. Both the \$95 tariff and the Proposed Tariff are akin to user fees. And as I explained in my January 16, 2020 letter to TCRY, in evaluating the reasonableness of the \$95 per (loaded) car user fee, the Port looked at TCRY's maintenance costs (averaged over eight years) and divided those costs by car count information available to the Port. When the Port did that calculation, the result was \$63 per car. However, the Port noted discrepancies in the information provided and, based on the totality of the information, determined the \$95 was not unreasonable.

The Proposed Tariff is a more than 30% increase, which is why the Port sought an explanation for the increase. From your response, it appears that TCRY did not base the \$125 Proposed Tariff on any underlying data or calculation. Please correct me if that is not the case. Please also provide whatever data or calculations TCRY did rely upon in coming up with the dollar amount for the Proposed Tariff.

Second, I asked you to identify the entities subject to the proposed tariff. Rather than just tell me, you referred to the Port of Benton Rail Plan section 2.8 and the Port of Benton and City of Richland Rail Master Plan section 2.6. Those documents were not created within the context of tariffs, they do not define “local rail user,” and not all the entities listed in those documents fall within the definition contained in the Proposed Tariff. For example, the cited sections of both documents identify the Port as a rail user located off the City’s Horn Rapids Spur (because it owns a transload facility). But the Port does not ship or receive railcar loads that traverse the Southern Connection. Similarly, the cited sections in those documents generally discuss the shippers located off the Southern Connection and the Horn Rapids Spur, but do not discuss BNSF or UP. Yet, both Class I railroads appear to meet the Proposed Tariff’s definition of local rail user. In short, your explanation did not answer my question. Please provide the names of the entities that TCRY believes would be subject to the Proposed Tariff.

Third, I asked for the legal authority, precedent, and/or industry standard that would authorize TCRY to assess charges upon non-TCRY customers. You did not provide a response. A similar issue came up in 2009 when the Port was conducting due diligence of a facility user fee tariff TCRY proposed (but withdrew before the Port completed its analysis). At that time, the Port’s industry expert noted that TCRY could not collect fees from shippers because it was not performing any work for the shippers. Likewise, the CFRs that govern railroad tariffs contemplate privity between the entity charging a fee and the entity against which charges will be assessed. *See* 49 C.F.R. 1300 *et seq.* Thus, I am unaware of any framework under which TCRY could legally assess fees upon entities that are not TCRY customers – which is why I asked you to provide that framework or analysis.

Finally, how would the Proposed Tariff be assessed? To provide a hypothetical, let’s say BNSF brought 10 loaded cars from an entity in Iowa to Preferred Freezer and then turned around brought 15 loaded cars from Preferred Freezer, bound for an entity Montana. Which entity or entities would be charged?

As I mentioned at the outset, the Port continues its due diligence, but needs the above information to complete its analysis. In the meantime, the Port will seek comment from the entities it understands would be affected by the Proposed Tariff.

Best regards,

David J. Billetdeaux | [Port of Benton](#), Attorney

3250 Port of Benton Blvd. | Richland, WA 99354

509. 375. 3060 | Office

509. 375. 5287 | Fax

509. 578. 6189 | Mobile

Email: david@portofbenton.com

This email may contain privileged or confidential information disclosed only to the addressee. If you have received this email in error, do not copy or distribute it to other persons not authorized to receive it. Please call the sender at 509.375.3060 to make arrangements for the document to be retrieved or destroyed. Any use, copying, retention or disclosure by any person other than the intended recipient or the intended recipient's designees is strictly prohibited. Warning: Although the Port of Benton has taken reasonable precautions to ensure no viruses are present in this email, the Port shall not accept responsibility for any loss or damage arising from the use of this email or attachments.

Disclaimer: Public documents and records are available to the public as provided under the Washington State Public Records Act (RCW 42.56). This e-mail may be considered subject to the Public Records Act and may be disclosed to a third-party requestor.

EXHIBIT 14

Marks, Justin J.

From: David Billetdeaux <david@portofbenton.com>
Sent: Monday, July 27, 2020 2:34 PM
To: Rydel Peterson
Subject: FW: Invoice 11470 from Tri-City Railroad Company, LLC
Attachments: Inv_11470_from_TriCity_Railroad_Company_LLC_18836.pdf

Rydel,

Mr. Martin at Lamb Weston has raised concerns to the Port. Please provide any comment you wish to in response.

Thank you,

David J. Billetdeaux | Port of Benton, Attorney

3250 Port of Benton Blvd. | Richland, WA 99354

509. 375. 3060 | Office

509. 375. 5287 | Fax

509. 578. 6189 | Mobile

Email: david@portofbenton.com

This email may contain privileged or confidential information disclosed only to the addressee. If you have received this email in error, do not copy or distribute it to other persons not authorized to receive it. Please call the sender at 509.375.3060 to make arrangements for the document to be retrieved or destroyed. Any use, copying, retention or disclosure by any person other than the intended recipient or the intended recipient's designees is strictly prohibited. Warning: Although the Port of Benton has taken reasonable precautions to ensure no viruses are present in this email, the Port shall not accept responsibility for any loss or damage arising from the use of this email or attachments.

Disclaimer: Public documents and records are available to the public as provided under the Washington State Public Records Act (RCW 42.56). This e-mail may be considered subject to the Public Records Act and may be disclosed to a third-party requestor.

From: Martin, Dirk <Dirk.Martin@lambweston.com>
Sent: Thursday, July 23, 2020 4:13 PM
To: Diahann Howard <dhoward@portofbenton.com>
Subject: FW: Invoice 11470 from Tri-City Railroad Company, LLC

Diahann,

We just received the attached invoice from TCRY where they are referencing a Tariff already in place from 2018 and just approved by the Port of Benton in January of this year. This is different than the most recent Supplement 5 tariff that you have yet to approve.

This is very concerning that TCRY business accounting practices are so far in arrears that they are back billing us for 6 months of rail service. Our financial year ends May 31 and this will cause an accounting variance in our year end close that was not communicated prior. We continue to have concerns with the Port of Benton's use of TCRY to manage the rail access we currently need. We are having to investigate more cost effective and better service options that will significantly reduce our use of the Port of Benton facilities.

I need the Port of Benton to confirm that Miscellaneous Charges Tariff Supplement 1 Effective September 18, 2018 is still active and approved.

Thanks,
Dirk Martin
Sr. Director Logistics | Supply Chain
m +1 940.453.6661

From: Grade, Deanna <Deanna.Grade@lambweston.com>
Sent: Thursday, July 23, 2020 2:54 PM
To: Hansen, Kindra <Kindra.Hansen@lambweston.com>; Martin, Dirk <Dirk.Martin@lambweston.com>
Cc: Ratuiste, Morie <Morie.Ratuiste@lambweston.com>
Subject: FW: Invoice 11470 from Tri-City Railroad Company, LLC

Dirk,
I just received the attached invoice from TCRY. Are these fees part of the conversations being had with the Port? Please confirm LW shouldn't pay the fees listed on the invoices.

Thank you,

Deanna Grade
Manager Transportation Procurement
8701 W. Gage Blvd.
Kennewick, WA 99336
P 509-736-0442
F 509-736-2162
deanna.grade@lambweston.com



From: Lisa Anderson <lisaanderson@tcry.com>
Sent: Thursday, July 23, 2020 2:23 PM
To: Grade, Deanna <Deanna.Grade@lambweston.com>; brad.sanders@lambweston.com; Ratuiste, Morie <Morie.Ratuiste@lambweston.com>
Subject: Invoice 11470 from Tri-City Railroad Company, LLC

[FROM EXTERNAL SOURCE]

Good afternoon,

Please see attached.

Hard copy to follow.

Thank you.

Lisa Anderson
Executive Vice President

Corporate Secretary
Tri-City Railroad Company, LLC
(360) 239-9067

To view attachment

Open the attached PDF file. You must have [Acrobat® Reader®](#) installed to view the attachment.

CONFIDENTIALITY NOTICE:

This message and any attachments are solely for the use of the individual or entity to which this message is addressed and contains information that is confidential. If the reader of this message is not the intended recipient, you are hereby notified that any review, re-transmission, disclosure, copying, distribution or the taking of any action in reliance on the contents of this communication by persons or entities other than the intended recipient is strictly prohibited. If you have received this message in error, please contact the sender and delete the material from any computer.

EXHIBIT 15

Marks, Justin J.

From: david@portofbenton.com
Sent: Thursday, July 9, 2020 2:54 PM
To: rydel@tcry.com
Subject: RE: Miscellaneous Charges Tariff Proposed Supplement
Attachments: FW: Invoice 11458 from Tri-City Railroad Company, LLC (124 KB); PCA Comment on TCRY Tariff (314 KB)

Rydel:

The Port has made no “determination” as to whether CWCP or DelHur are “users of the railroad.” The Port has been requesting TCRY identify the entities that it believes would be subject to the proposed tariff. TCRY has not responded. However, this issue is addressed in the complaints the Port has received to date. Please note that in addition to the complaints I forwarded on July 1, the Port has also received the attached complaint to proposed Supplement 5 to TCRY’s Miscellaneous Charges Tariff and the attached complaint to Supplement 1 to TCRY’s Miscellaneous Charges Tariff.

As you know, lease paragraph 7.1 says “[a]ny tariffs imposed *upon the use* of the railroad by the Tenant shall be reasonable in light of *the use of the railroad* and shall be subject to the review and approval of the Port, to insure compliance with the Port’s agreements with the United States.” (Emphasis added). This language, particularly when read in conjunction with paragraph 7.2, limits the application of tariffs to those entities that use the railroad. The shippers that have filed complaints note that they are served by BNSF and/or UP. In other words, they claim that they do not use the railroad themselves, rather, BNSF and UP do.

Please provide TCRY’s response to the complaints the Port has received to date as well as a response to the Port’s previous requests for information, including whether the shippers are users of the railroad subject to TCRY tariffs.

Sincerely,

David J. Billetdeaux | Port of Benton, Attorney
3250 Port of Benton Blvd. | Richland, WA 99354
509. 375. 3060 | Office
509. 375. 5287 | Fax
509. 578. 6189 | Mobile
Email: david@portofbenton.com

This email may contain privileged or confidential information disclosed only to the addressee. If you have received this email in error, do not copy or distribute it to other persons not authorized to receive it. Please call the sender at 509.375.3060 to make arrangements for the document to be retrieved or destroyed. Any use, copying, retention or disclosure by any person other than the intended recipient or the intended recipient’s designees is strictly prohibited. Warning: Although the Port of Benton has taken reasonable precautions to ensure no viruses are present in this email, the Port shall not accept responsibility for any loss or damage arising from the use of this email or attachments.

Disclaimer: Public documents and records are available to the public as provided under the Washington State Public Records Act (RCW 42.56). This e-mail may be considered subject to the Public Records Act and may be disclosed to a third-party requestor.

Marks, Justin J.

From: RossCorthell@packagingcorp.com
Sent: Tuesday, July 7, 2020 2:17 PM
To: dhoward@portofbenton.com; david@portofbenton.com
Cc: baridley@packagingcorp.com; EllisCunningham@packagingcorp.com; KatyConlan@packagingcorp.com
Subject: PCA Comment on TCRY Tariff
Attachments: PCA Comment TCRY Tariff 07.07.2020.pdf

Diahann and David-

Please see attached record regarding PCA's response to the Misc. Charges Tariff recently submitted by TCRY. Please don't hesitate to let me know if you have questions or concerns. Thank you.

Ross Corthell

Vice President, Transportation

Packaging Corporation of America

1 North Field Ct

Lake Forest, IL 60045

rosscorthell@packagingcorp.com

O: 847.482.2017 | C: 208.850.3604 | F: 208.395.9065





July 7, 2020

Diahann Howard
Executive Director
Port of Benton
3250 Port of Benton Blvd
Richland, WA 99354

VIA: dhoward@portofbenton.com

Dear Ms Howard:

We have become aware of Tri Cities Rail (TCRY) intent to implement a "Track Use Fee" per Miscellaneous Charges Supplement 5 dated June 8, 2020 and have objection to paying such fees. We understand that the Port of Benton (Port) has an existing agreement with TCry, which provides for adequate maintenance on track that our rail traffic utilize enroot to our site at 3003 Kingsgate Way, Richland, WA, 99354.

We have an existing Industry Track Agreement as well as a freight letter agreement with Union Pacific Railroad, which moves our traffic in both line-haul and local service. We see no value added on the part of TCry over and above the maintenance provided per above reference. Therefore, we do not see this tariff application as having merit and believe we have a reasonable complaint to dispute it.

Sincerely,

A handwritten signature in black ink, appearing to read "Ross Corthell". The signature is written in a cursive, flowing style.

Ross Corthell
Vice President – Transportation

Cc: David J. Billetdeaux @ david@portofbenton.com

EXHIBIT 16

Marks, Justin J.

From: David Billetdeaux <david@portofbenton.com>
Sent: Thursday, August 13, 2020 12:32 PM
To: Rydel Peterson
Subject: Letter from Preferred Freezer
Attachments: M. Tuvim letter to D. Billetdeaux.pdf

Rydel,

Attached, please find a letter from Preferred Freezer's counsel, received in the mail this week.

Thank you,

David J. Billetdeaux | Port of Benton, Attorney

3250 Port of Benton Blvd. | Richland, WA 99354

509. 375. 3060 | Office

509. 375. 5287 | Fax

509. 578. 6189 | Mobile

Email: david@portofbenton.com

This email may contain privileged or confidential information disclosed only to the addressee. If you have received this email in error, do not copy or distribute it to other persons not authorized to receive it. Please call the sender at 509.375.3060 to make arrangements for the document to be retrieved or destroyed. Any use, copying, retention or disclosure by any person other than the intended recipient or the intended recipient's designees is strictly prohibited. Warning: Although the Port of Benton has taken reasonable precautions to ensure no viruses are present in this email, the Port shall not accept responsibility for any loss or damage arising from the use of this email or attachments.

Disclaimer: Public documents and records are available to the public as provided under the Washington State Public Records Act (RCW 42.56). This e-mail may be considered subject to the Public Records Act and may be disclosed to a third-party requestor.

MARK B. TUVIM
MTUVIM@GRSM.COM
DIRECT DIAL: (206) 695-5144



ATTORNEYS AT LAW
701 FIFTH AVENUE, SUITE 2100
SEATTLE, WA 98104
WWW.GRSM.COM

August 7, 2020

VIA EMAIL AND U.S. MAIL

David J. Billetdeaux
Port of Benton
3250 Port of Benton Blvd.
Richland, WA 99354

Re: Tri-City Railroad Company Tariffs

Dear Mr. Billetdeaux:

This law firm represents Preferred Freezer of Richland, LLC ("Preferred Freezer"). I write today to object to a tariff proposed by Tri-City Railroad Company (TCRY) and a tariff TCRY is currently attempting to impose on Preferred Freezer.

Proposed Supplement 5

Proposed Supplement 5 seeks to apply a \$125 track use fee to "each and every loaded railcar that is destined to or departing from a Local Rail User." The term "Local Rail User" is defined as (1) "any entity, person, or business that ships and/or receives railcar loads that traverse TCRY trackage." The term "Local Rail User" is further defined (2) "by example in the Port of Benton Rail Plan section 2.8 and the Port of Benton and City of Richland Rail Master Plan section 2.6 (copies of the plans are provided on TCRY's website.)"

Preferred has several objections to this proposed tariff. First, while Supplement 5 identifies the railcars subject to the proposed tariff ("loaded railcar destined to or departing from" the "Local Rail User"), it neither identifies nor defines the party responsible for payment thereof. At the very least, Supplement 5 is vague and ambiguous, and fails to provide sufficient notice to the party responsible for payment thereof. Further, to the extent TCRY seeks to impose this tariff on the "Local Rail Users" despite this lack of clarity, Preferred Freezer objects to Supplement 5 to the extent it purports to levy a tariff on it based upon the language of documents which have not formally been adopted by the Port of Benton.

Preferred Freezer further objects to the proposed tariff based in the lack of any showing by TCRY that the proposed amount is necessary for track maintenance or any requirement that the use fees collected will in fact be used by TCRY for track maintenance.

Supplement 1

On July 23, 2020, Preferred received an invoice in the amount of \$94,905 for 999 cars at the rate of \$95 per car for “Track Maintenance charges assessed on cars that entered the TCRY at Richland Connection in Kennewick, WA for the period of January 16, 2020 – June 30, 2020 – manifest cars”. According to the invoice, the charges are “assessed per Miscellaneous Charges Tariff Supplement 1 Effective September 18, 2018 and Approved by the Port of Benton January 16, 2020. According to Rydel Peterson in correspondence dated July 28, 2020, Preferred Freezer was charged these fees as a “user of the Railroad” as defined by the Port of Benton in its Rail Master Plan.

Section 9 of Supplement 1 provides in pertinent part:

5. Railroad Maintenance Charge

A track maintenance charge of Ninety-Five Dollars (\$95.00) per car will be charged by TCRY on all cars that enter the TCRY at RICHALND CONNECTION in Kennewick, WA

This charge will be collected by and accrue solely to the TCRY. This charge will be in addition to all other applicable charges.

Under Section F of the section entitled “GENERAL APPLICATION”, Supplement 1 provides that “The responsible party is the entity subject to this Supplement 1 of the Miscellaneous Charges Tariff.”

Preferred Freezer objects to TCRY’s attempt to impose this tariff on Preferred Freezer. First, Supplement 1 has no provision which on its face identifies Preferred Freezer as a party responsible for payment of this tariff. The tariff is imposed on “all cars” that enter the identified TCRY trackage without identification of the entity responsible for payment. In fact, Preferred Freezer owns no cars – the basis for imposition of the tariff – nor did Preferred Freezer transport any cars over the identified trackage, Preferred Freezer further objects to the tariff based in the lack of any showing by TCRY that the amount is necessary for track maintenance or that the fees collected will in fact be used by TCRY for track maintenance.

Please feel free to contact me if you have any questions or require any additional information.

Best regards,

GORDON REES SCULLY MANSUKHANI, LLP

s/ Mark B. Tuvim

Mark B. Tuvim

MBT:lv

EXHIBIT 17

Marks, Justin J.

From: Rydel Peterson <rydel@tcry.com>
Sent: Tuesday, June 16, 2020 8:01 PM
To: David Billetdeaux
Subject: Re: Supplement 5.pdf

David,

In response to your questions:

1. TCRY currently has a Port approved maintenance charge of \$95 per car on all cars that traverse the TCRY trackage.

The User Fee proposes to eliminate that charge and roll the \$95 maintenance charge that is applicable to all cars into the User Fee that is only applicable to loaded cars.

That leaves \$30 per loaded car to help fund the operations and management of the railroad, which seems to TCRY to be a reasonable figure.

2. The Port identifies examples of entities that would be subject to the User Fee.

They are identified in the Port of Benton Rail Plan section 2.8 and the Port of Benton and City of Richland Rail Master Plan section 2.6.

The User Fee is applicable to Local Rail Users.

The tariff defines a Local Rail User as “any entity, person, or business that ships and/or receives railcar loads that traverse TCRY trackage.”

All Local Rail Users would be subject to the tariff.

3. TCRY has a contractual right to impose tariffs.

The Port has a contractual right to ensure that those tariffs are in compliance with the Port’s agreements with the United States.

TCRY knows of no legal authority that would prevent it from instituting and collecting on the proposed User Fee.

Please share any legal authority that the Port believes would prevent TCRY from instituting and collecting on the User Fee from Local Rail Users.

Again, the User Fee would be applicable to all Local Rail Users.

TCRY keeps track of all cars and carloads that traverse TCRY trackage making it relatively easy to determine who the Local Rail User is that is either shipping out a loaded car or receiving a loaded car.

Thank you,

Rydel

Sent from my iPhone

On Jun 15, 2020, at 4:52 PM, David Billetdeaux <david@portofbenton.com> wrote:

Rydel:

As requested, the Port is working with its attorneys and industry experts to review TCRY's proposed tariff. To complete that analysis, the Port requests TCRY provide the following information:

1. Please provide the rationale behind the \$125 per-car fee as well as any industry standard, legal analysis, or other documentation supporting the proposed amount.
2. Please identify the entities subject to the proposed tariff. Although it is not entirely clear, it appears the proposed tariff is to be assessed directly upon the shippers located on the Southern Connection, and not the railroads who operate on the line. However, please confirm. Please also confirm which shippers would be subject to the proposed tariff.
3. If the proposed tariff is meant to be assessed on the shippers, please provide the Port with the legal authority, precedent, and/or industry analysis that would authorize the assessment of charges upon non-TCRY customers. Similarly, please explain how TCRY will accurately determine who to charge and how much to charge if the subject cars are handled by BNSF and/or UP.

I look forward to receiving the above information, which will enable to Port to conducts its analysis of the proposed tariff.

David J. Billetdeaux | Port of Benton, Attorney

3250 Port of Benton Blvd. | Richland, WA 99354

509. 375. 3060 | Office

509. 375. 5287 | Fax

509. 578. 6189 | Mobile

Email: david@portofbenton.com

This email may contain privileged or confidential information disclosed only to the addressee. If you have received this email in error, do not copy or distribute it to other persons not authorized to receive it. Please call the sender at 509.375.3060 to make arrangements for the document to be retrieved or destroyed. Any use, copying, retention or disclosure by any person other than the intended recipient or the intended recipient's designees is strictly prohibited. Warning: Although the Port of Benton has taken reasonable precautions to ensure no viruses are present in this email, the Port shall not accept responsibility for any loss or damage arising from the use of this email or attachments.

Disclaimer: Public documents and records are available to the public as provided under the Washington State Public Records Act (RCW 42.56). This e-mail may be considered subject to the Public Records Act and may be disclosed to a third-party requestor.

From: Rydel Peterson <rydel@tcry.com>
Sent: Monday, June 8, 2020 4:58 PM
To: David Billetdeaux <david@portofbenton.com>
Subject: Supplement 5.pdf

David,

Please find attached Supplement 5 to TCRY's Miscellaneous Charges Tariff.

The Port's prompt review and approval is appreciated.

Thank you,

Rydel

Sent from my iPhone